SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1927

No. 113

UNITED STATES SHIPPING BOARD EMERGENCY FLEET CORPORATION, PETITIONER

VS.

WESTERN UNION TELEGRAPH COMPANY

ON WRIT OF CERTIORARI TO THE COURT OF APPEALS OF THE DISTRICT OF COLUMBIA

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R.S. 5263 & 4 grant certain rights of way on Military post roads &c &c

R.S. 5266 says "Telegrams between the several departments of the Government and their officers & agents ... shall have priority over all other business at such rates as the P.M.G. shall annually fix" =

Govt. rates have been paid without prejudice to the Claim for enough to make up Commercial rates.

The Black Corp. was created by Act 29 July 76. 39 S.T. 28. The Shipping Bd has all the stock, paid for by U.S. - The Bd may sell any or all but shall not be a running holder

The Corp. is empowered broadly to operate ships.

In U.S. v Strang 254 U.S. - held (1) Agt of Corp not agt of U.S. (2) Agt of Stockholders not agent of Shareholders - (3) Inspector for Corp was not indictable under 41 Cr Code

Buchanan v U.S. 256 U.S. 363 held that Baggage porter was not agent of U.S. during federal control ~~[illegible]~~ under §39. - Not officer or or acting for or for U.S.

Sloan Ship. Yards Corp. v U.S. 258/574 held W Corp had powers of corporation liable on contract for work: Not in all cases immune to private suit. (2) Claim in tort may not entitled to preference as a Claim of the U.S.

"

Planters' Bank vs Georgia 9 Wheat 904 ~~[illegible]~~ jurisdiction. ~~[illegible]~~ This was a Ga Corp. The State was a member - "When a govt becomes a partner in a trading Corp. it descends - divests itself of its sovereign character. Hall vs His 103/5. - Cont of employment by His forfeit 'per' them repealed etc can held liable. S.C. v U.S. 199/437 - Held State liable for int' rev' tax. The state having gone into liquor business -

Govt says.

1. E.F. Corp was acting as agent of a dept of the Govt within the meaning of the act. RS. 5266.

(W Shipping Bd is Defl. Concedes that the Corp is not strictly a Defl. Nor does it claim that the Corp. is a broad agency, an adjutancy agency or instrumentality of the Govt, it is entitled to Govt rates on the Corp's account. In this case record shows Corp was not acting in Corp Capacity but as an agent of the Shipping Board. Corp conformed to all directions of Shipping Bd.

Brf 17

(4) Activities of Govt Govt in character - In any event D.1. is entitled to rates paid out of the Treasury without regard to what the activities were. The contention is broadly that even if the activities were commercial & not governmental the Corp is entitled to Govt rates.

(C) Rate apply to telegrams to & from outside points.

the 60 days!

(a). Combining by the Corp to directions of the Bd is immaterial ① Messages were of the Sep 30. 21. (2) there are three per. July 1917 to June 1, 1920. from ② to Sep 30 21. reconstruct - ③ after the resolution of Sep 30, 1921 - peacetime = The Corp is controlled by shareholders function in a Corp Capacity, Par 11 of Stipulation shows the business was corporate not governmental

(b) Rel bet U.S. & Corp is stockholding. merely

Note! Regarding the Pork Road as a contract, the court will direct the surrounding circumstances. Did the parties intend to have govt rate apply to messages sent & received by not by emps officers or employes of the the Govt, but by the agts officers & employees of a Corp created for commercial & business purposes and as an instrumentality to aid the development of ~~trade~~ to ocean transportation of American commerce?

Court of Appeals of the District of Columbia.

No. 4322.

THE UNITED STATES SHIPPING BOARD EMERGENCY FLEET CORPORATION, Appellant,

vs.

THE WESTERN UNION TELEGRAPH COMPANY.

a Supreme Court of the District of Columbia.

At Law.

No. 67088.

THE WESTERN UNION TELEGRAPH COMPANY, Plaintiff,

vs.

THE UNITED STATES SHIPPING BOARD EMERGENCY FLEET CORPORATION, Defendant.

UNITED STATES OF AMERICA,
District of Columbia, ss:

Be it remembered, That in the Supreme Court of the District of Columbia, at the City of Washington, in said District, at the times hereinafter mentioned, the following papers were filed and proceedings had, in the above-entitled cause, to wit:

1 *Declaration.*

Filed October 23, 1922.

In the Supreme Court of the District of Columbia.

At Law.

No. 67088.

THE WESTERN UNION TELEGRAPH COMPANY, Plaintiff,

vs.

THE UNITED STATES SHIPPING BOARD EMERGENCY FLEET CORPORATION, Defendant.

1. The plaintiff, The Western Union Telegraph Company, a corporation duly organized and existing under the laws of the State

of New York, sues the defendant, The United States Shipping Board Emergency Fleet Corporation, a corporation of the District of Columbia, for that the plaintiff at the times of the happening of the matters and things hereinafter set forth and for a long time prior thereto was engaged in the business of transmitting messages by telegraph in, to and from the District of Columbia, the several States of the United States, and elsewhere, and charged for said services fixed sums of money or tariffs established and made the legal and uniform rates in conformity with the Act of Congress known as The Interstate Commerce Act and amendments thereto, and the usual and legal rates applicable to messages were dependent upon the points of origin and destination of said messages, the number of words therein contained, and the class of service; that heretofore the defendant requested the plaintiff to perform services for it in transmitting and delivering messages and agreed to pay to the plaintiff the plaintiff's established and legal charges therefor at the end of each and every calendar month in respect of the messages
2 in respect of which services had been so performed during the month, and upon said request and agreement the plaintiff performed services for the defendant; that during the month of June, 1922, the plaintiff performed services as aforesaid upon which the charges aforesaid amounted to the sum of one thousand, nine hundred and thirty-one dollars and four cents; that during the month of July, 1922, the plaintiff performed services as aforesaid upon which the charges aforesaid amounted to the sum of five hundred and five dollars and ninety-five cents; that the plaintiff has demanded of the defendant payment of the amounts due as aforesaid aggregating two thousand four hundred and thirty-six dollars and ninety-nine cents, yet the said defendant has not paid the said sum or any part thereof; wherefore the plaintiff brings this suit and claims the sum of two thousand four hundred and thirty-six dollars and ninety-nine cents, with interest on one thousand nine hundred and thirty-one dollars and four cents from the first day of July, 1922, and interest on two thousand four hundred and thirty-six dollars and ninety-nine cents from the first day of August, 1922, besides costs.

2. The plaintiff, the Western Union Telegraph Company, a corporation duly organized and existing under the laws of the State of New York, sues the defendant, The United States Shipping Board Emergency Fleet Corporation, a corporation of the District of Columbia, for money payable by the defendant to the plaintiff for goods sold and delivered by the plaintiff to the defendant, and for work done and materials provided by the plaintiff for the defendant at his request; and for money lent by the plaintiff to the
3 defendant, and for money paid by the plaintiff for the defendant at his request, and for money received by the defendant for the use of the plaintiff; and for money found to be due from the defendant to the plaintiff on accounts stated between them, and the plaintiff claims the sum of two thousand four hundred and thirty-six dollars and ninety-nine cents, with interest on one thousand, nine hundred and thirty-one dollars and four cents from the first day of July, 1922, and interest on two thousand four hundred

and thirty-six dollars and ninety-nine cents from the first day of August, 1922, according to the particulars of demand hereto annexed, besides costs.

WILSON, HUIDEKOPER & LESH,
Attorneys for Plaintiff.

4 *Particulars of Demand.*

* * * * * * *

The United States Shipping Board, Emergency Fleet Corporation to the Western Union Telegraph Company, Dr.

To services performed by the plaintiff at the request of the defendant in transmitting and delivering messages at the usual, established and legal rates, during the months of June and July, 1922, said messages being some of them filed for transmission and the other of them received at Washington, District of Columbia, on the dates, to the destinations or from the points of origin, signed by the agents of the defendant and charged for in the amounts, respectively, set out in the following schedule, amounting in the aggregate to two thousand four hundred and thirty-six dollars and ninety-nine cents, of which one thousand and nine hundred and thirty-one dollars and four cents accrued during the month of June, 1922, and was due, and interest is claimed from the first day of July, 1922, and of which five hundred and five dollars and ninety-five cents accrued during the month of July, 1922, and was due, and interest is claimed from the first day of August, 1922:

5 The Western Union Telegraph Company, Incorporated.

Western Union Telegraph and Cable.

Bills are payable not later than 10th of each month. All checks should be drawn to the order of the Western Union Telegraph Company and mailed to the Company.

U. S. Shipping Board Emergency Fleet Corpn.

Date: Washn., D. C., June, 1922.

If you pay by check please detach this coupon and mail with check, *retaining the bill for your records.* Receipt of check remittances will be acknowledged only when specifically requested, since paid checks returned by banks constitute full receipts for such payments.

Amount $—.

Detach here.

To the Western Union Telegraph Company, Incorporated, Dr.

Amount.	Date.	Name of point.	Total.
1 20	1 Summers	To San Fran	
2 31	.... Relyea	"	
4 09	.... Carl	"	
1 20	.... Jacobsen	"	
3 24	.... Minor	"	
2 31	.... Boyer	"	
1 97	.... Dranga	"	
15 48	.... Georg	"	
2 31	.... Dranga	"	
2 05	.... Dangers	"	
3 36	.... Meisenbach	Alameda	
3 41	.... Saint	S Pedro	
81	.... Ames	Chgo	
30	.... Carson	Balto	
1 99	.... N A & W SS Co	To Bostn	
95	.... Hay	St Louis	
90	.... Easton	Rutland	
2 22	.... Tex Abnk & T	Galveston	
84	.... Clinchfd Nav	N Y	
36	.... Lowe	"	
3 49	.... Gunelach A	N Y	
44	.... Craig	N Y	
60	.... Dillingham	N Orl	
60	.... "	"	
74	.... S Cruz	N Orl	
64	.... Thomas	"	
4 42	.... S Cruz S B	"	
12 08	.... Journal Comm	Seattle	
10 55	.... Semmes	Seattle	
7 75	.... "	"	
1 04	.... Haag	Tacoma	
1 20	.... Snow	Portld	
8 17	.... Relyea	Portld	
2 39	.... Richardson	"	
10 81	.... "	"	
8 43	.... Relyea	"	
6			
4 09	2 Dranga	San Fran	
2 39	.... Cotton	"	
2 73	.... Relyea	"	
4 86	.... Young	"	
5 37	.... Relyea	"	
1 29	.... Meisenbach	Alameda	
2 90	.... Meisenbach	"	
1 29	.... "	"	
1 63	.... "	"	
36	.... McLane	Hoboken	

Amount.	Date.	Name of point.	Total.
1 67	.... Windward I L	Mobile	.....
92	.... Churchill	Novn Scotia.....	.....
7 15	.... Snow	Portld	.....
1 20	.... Crichton	Portld	.....
1 20	.... Baird	"	.....
1 20	.... Haag	Tacoma	.....
	Fwd		164 81

NOTE.—The following twenty-two pages omitted per designation of record.

Summary of Schedule.

1922, June.	Domestic	$1,563.39	
	Foreign	367.65	$1,931.04
" July	Domestic	.....	505.95
	Total		$2,436.99

WILSON, HUDEKOPER & LESH,
Attorneys for Plaintiff.

7 *Agreed Statement of Facts.*

Filed September 3, 1924.

* * * * * * *

The plaintiff, The Western Union Telegraph Company (hereinafter called the Telegraph Company), and the defendant, the United States Shipping Board Emergency Fleet Corporation (hereinafter called the Fleet Corporation) hereby mutually agree and stipulate upon and to the following statements of fact, both parties, however, reserving respectively all possible objections as to the relevancy, competency, or materiality of the several facts so agreed to be true or any of them, with like effect as though objection had been made and exception noted:

1. The Telegraph Company is a corporation organized under the laws of the State of New York and continuously existing since and before June 8, 1867, and was such Corporation at all times pertinent to this cause.

2. The Fleet Corporation is a Corporation organized April 16, 1917, and existing under the laws of the District of Columbia, and was such Corporation at all times pertinent to this cause.

3. The Telegraph Company throughout its existence has been and is engaged in the business of transmitting messages by telegraph in, to and from the District of Columbia, and in, to and from the several States of the United States, the District of Columbia, the possessions of the United States and foreign countries.

4. The Telegraph Company charges, and at all times pertinent hereto did charge, for transmitting messages by telegraph for the public generally, legal and uniform rates, in conformity with the Act of the Congress of the United States known as the Inter-
8 state Commerce Act and amendments thereto. These rates have depended and still depend upon the points of origin and destination of the messages, the number of words therein and the class of message, such as telegram, day letter, night message or night letter. To messages known as (United States) "Government" messages, the "Government" rate is and at all times material hereto has been applied, with the accompanying right of priority over all other business in their transmission as distinguished from the messages of and rates thereon to the public generally, herein called "commercial" messages and rates.

5. The Government rates upon domestic telegrams are fixed annually by the Postmaster General of the United States, pursuant to Section 2 of the Act of Congress approved July 24, 1866, entitled "An Act to aid in the Construction of Telegraph Lines, and to secure to the Government the Use of the same for postal, military, and other Purposes", 14 Stat. 221, and have been so fixed annually since the approval of that Act. The rates so fixed have obtained and do obtain for a fiscal year, beginning on July 1st of any given year, and terminating on June 30th of the following year. The Government rates for and to prevail throughout the fiscal years July 1, 1921 to June 30 1922, and July 1, 1922 to June 30, 1923, were fixed by the Postmaster General of the United States on July 1st 1921, and July 1st, 1922, respectively, by Orders numbered 6155 and 7813, respectively. Copies of said Orders are hereto attached, marked respectively Exhibits "A" and "B" and made part hereof, being incorporated by reference as fully as though set out in the body of this agreed statement of facts. These respective Orders cover in fact the periods (June, 1922 and July, 1922) in question in this cause. The Government rates in the said Orders established are as to domestic telegrams in general terms forty (40) per centum of the legal commercial rates, subject, however, to certain modifications set forth in the said Orders. The Government rates as to cablegrams are fifty (50) per centum of the commercial
9 rates.

6. The Telegraph Company, on June 8, 1867, pursuant to a resolution of its board of directors, duly filed with the then Postmaster General of the United States, as contemplated by Section 4 of the aforesaid Act of Congress of July 24, 1866, its written acceptance of the restrictions and obligations imposed and required by the said Act for the exercise by it of the rights, powers and privileges extended to and conferred upon acceptors by the said Act. A certified copy of the said acceptance is hereto annexed, made part hereof, and marked Exhibit "B-1".

7. The statement in the declaration that the messages therein referred to were transmitted and delivered by the Telegraph Company for and at the request of the Fleet Corporation is true in fact, and the computation of the amount of charge which is or

would be due therefor at the commercial rate is correct, except that the enumeration of messages set forth in the particulars of demand annexed to the declaration herein and the charges in respect to said messages are subject to these corrections that certain items therein should be charged against others than the Fleet Corporation, and certain other items are duplicate charges, and therefore there should be eliminated from the June, 1922, domestic bill, charges totaling the sum of $4.67, and from the July, 1922, domestic bill, charges totaling $3.02.

The charges at the Government rate upon the messages set forth in the said particulars of demand, after making the eliminations last referred to, are as follows: for the month of June, 1922, domestic, $636.15; June, 1922, cable $180.87; July, 1922, domestic, $204.69.

8. Since the filing of the declaration herein, and on or about January 25, 1923, the Fleet Corporation has paid to the Telegraph Company the charges aforesaid at the Government rate, without prejudice to the contentions of either party hereto, and pursuant to a certain agreement and stipulation dated and entered into between the parties on October 19, 1922, which is attached hereto as Exhibit "C" and to be read as a part hereof.

That by reason of the eliminations in the last numbered
10 paragraph mentioned, and the payment in the next foregoing paragraph referred to, the present suit stands as a claim for the unpaid difference between the Government rate and the commercial rate on the aforesaid messages, that is, for $1,407.59, with interest on $1,109.35, from July 1, 1922, and interest on $298.24 from August 1, 1922.

The items going to make up this modified claim are set forth in the following schedule:

	On messages set out in particulars of demand		On messages now agreed upon per audited bill		Difference claimed and due if commercial rate applicable
Period 1922	Commercial rate	Govt. rate	Commercial rate	Govt. rate	
June					
Domestic	$1,563.39	$638.04	$1,558.72	$636.15	$922.57
Cable	367.65	180.87	367.65	180.87	186.78
July					
Domestic	505.95	206.50	502.93	204.69	298.24

Of the messages involved in this action, (1) some were messages pertaining to the operations of the Fleet Corporation and which passed between it and its officers and agents, in its behalf, or between it and its officers and agents in its behalf and the officers and agents of some branch of the Government, and (2) some were messages also pertaining to its operations, and which passed between it and it officers and agents in its behalf, on the one hand, and persons, firms or corporations which were not its officers or agents or those of any branch of the Government on the other hand. On messages of the first mentioned class, the tolls calculated at commercial rates amount

to $1,846.77, and at Government rates to $775.61. On the messages of the second mentioned class, the tolls calculated at commercial rates amount to $582.53, and at Government rates to $246.10.

9. The Fleet Corporation was caused by the United States Shipping Board to be organized pursuant to Section 11 of the Shipping Act of September 7, 1916, under Sub-Chapter 4 of Chapter 18 of the Code of Law for the District of Columbia, by certificate of incorporation filed in the office of the Recorder of Deeds, District of Columbia,
April 16, 1917, and recorded in Liber 33, folio 272, et seq., of
11 the corporation records of the District of Columbia. A copy of said certificate of incorporation is attached hereto as Exhibit "D" and to be read as a part hereof. On August 8, 1917, said certificate of incorporation was duly amended in the manner provided by the laws of the District of Columbia by the filing in the office of the said Recorder of Deeds of a certificate recorded in Liber 33 at folio 371, of which a copy is hereto annexed, marked Exhibit "D-1" and to be read as a part hereof. All of the incorporators of the Fleet Corporation at and prior to the time of its incorporation were either officers or employees of the United States Shipping Board and were requested by the Chairman of the Board to act in that capacity pursuant to resolutions duly adopted by the Board on April 14, 1917 copies of which are hereto attached and made a part hereof and marked Exhibits "D-2" and "D-3" respectively.

10. Acting under authority of sundry Acts of Congress conferring upon him certain powers enumerated therein respectively the President of the United States issued his four certain Executive Orders bearing date July 11, 1917, June 18, 1918, December 3, 1918, and August 11, 1919, respectively, said Orders being numbered 2664, 2888, 3018, and 3145, respectively, and all of which may be referred to for all purposes pertinent to this cause as though fully copied herein.

On September 23, 1919, the Shipping Board passed the following resolution:

"Whereas, The President has by Executive order dated August 11, 1919, directed the United States Shipping Board to exercise all powers and authority vested in him in reference to the disposition of materials or plants as defined under the emergency shipping fund provision of the Deficiency Appropriation Act, approved June 15, 1917, acquired by the United States Shipping Board Emergency Fleet Corporation, and has further directed said Board in its discretion to sell, lease, or otherwise dispose of such materials and plants, or any portions or parts thereof, and that such sales, leases or other disposition shall be made directly by said Board, or by it, in its discretion through the United States Shipping Board Emergency Fleet Corporation, or through any other Corporation organized by it for such purpose.

12 "Resolved, That the Board do hereby direct that all sales, leases or other disposition of materials or plants, as above defined, or any portions or parts thereof, which it is empowered to make as aforesaid, shall be made through the United States Shipping

Board Emergency Fleet Corporation, by public or private sale or contract, with or without notice, in such lots, at such times and places, upon such credit, security and other terms, or conditions, and in such manner generally as said Corporation, from time to time, shall deem to the best advantage of the United States, and that the said Corporation shall have power to do all such acts and things and to execute all such deeds, leases, bills of sale and/or other instruments as in the judgment of the officers executing the same shall be necessary or desirable to carry out the purposes of this Resolution.

"Further resolved, That all acts heretofore done by said Corporation with reference to such sales, leases or other disposition, and which could have been properly done by said Board, be and the same are hereby ratified, approved and confirmed."

The Fleet Corporation from the respective dates upon which the aforesaid Executive Orders were issued did in fact exercise the powers delegated to it by said Orders and continued so to do until June 5, 1920 when the Act known as the Merchant Marine Act of 1920 was approved and took effect. Thereby the Acts of Congress, herein referred to, under which the President was authorized to delegate the powers originally vested in him thereby, and under which he made his four executive orders above referred to, were repealed.

After June 5, 1920, on which day the Merchant Marine Act was approved, and until September 30, 1921, on which day the resolution hereinafter referred to as Exhibit "E-1" was adopted by the Shipping Board, the Fleet Corporation pursued activities and engaged in operations of the following general character:

(1) It operated certain ships and assigned others for operation to managing and operating agents.

(2) On June 9, 1920, the Shipping Board duly adopted a resolution in the words and figures following:

"Resolved, That the power and authority relating to the rights and liabilities of the Emergency Fleet Corporation vested in the Shipping Board by sub-section 'c' of Section 2 of the Merchant Marine Act approved June 5, 1920, be exercised by the Shipping Board through and by the United States Shipping Board Emergency Fleet Corporation, to which is hereby delegated the exercise of such power and authority, in accordance with Section 35 of the above mentioned act."

On July 15, 1920, the Board of Trustees of the Fleet Corporation duly adopted a resolution in the words and figures following:

"Whereas, By resolution adopted on June 9, 1920, the Shipping Board delegated to the Emergency Fleet Corporation the power and authority vested in the Shipping Board by sub-section (c) of Section 2, of the Merchant Marine Act, 1920;

"Resolved, That the Construction Claims Board be and it is hereby, authorized and directed to exercise on behalf of the Board

of Trustees, and subject to the direction thereof, the power and authority delegated to the Emergency Fleet Corporation by said resolution of the Shipping Board."

That the Fleet Corporation through its Construction Claims Board which had been created on January 30, 1920, by order of a Vice-President of the Fleet Corporation, adjusted, settled and liquidated matters arising out of or incident to the actions taken under the four Executive Orders hereinbefore referred to, until November 18, 1920, when the said resolution of the Shipping Board was terminated and superseded by another resolution duly adopted by the Board on the latter date in the words and figures following:

"Resolved, That the Board of Trustees of the United States Shipping Board Emergency Fleet Corporation be, and it is hereby, authorized, empowered and directed to examine, and confirm, modify or reject, all findings of fact made by the Construction Claims Board upon claims submitted to that Board, and to present to the United States Shipping Board in final and complete form the disposition of each of said claims which said Board of Trustees shall determine upon, for the approval of the said United States Shipping Board."

From and after November 18, 1920, the Board of Trustees of the Emergency Fleet Corporation examined, confirmed, modified or rejected findings of fact of said Construction Claims Board
14 and presented said claims to the Shipping Board in accordance with said resolution of that date, until the Construction Claims Board was abolished on the 29th day of July, 1921.

The duties of the Construction Claims Board during its existence were to investigate and make findings regarding the just compensation to be paid whenever any contract was cancelled, modified, suspended or requisitioned or whenever any plant or part thereof or any ship charter or material, was made use of, assumed, acquired, occupied or taken over, in accordance with the Emergency Shipping Fund Provisions of the Urgent Deficiencies Appropriation Act approved June 15, 1917, as amended. When the Construction Claims Board was abolished on July 29, 1921, it was superseded by a body known as the Claims Commission, which was created by the Shipping Board by a resolution duly adopted on August 24, 1921, and made effective as of July 29, 1921, which resolution is in the words and figures following:

Resolved, 1. That pursuant to the powers and duties conferred and imposed by the Merchant Marine Act of 1920 upon the United States Shipping Board to adjust, settle and liquidate and to determine the amount of just compensation with reference to certain claims, there is hereby created a Commission to be known as the Claims Commission of the United States Shipping Board to be composed of a Chairman and four other Commissioners appointed by the United States Shipping Board. Such Commission shall have power to make and alter rules and regulations governing its own procedure

and the manner of presenting claims, and, subject to the prior approval of the Shipping Board, to appoint necessary assistants and employees, at salaries to be first approved by the Board, and shall have the authority herein set forth. Such Commission shall be composed of Walter D. Meals, Chairman, Arthur W. Teele, Frederick W. Wood, P. M. Watt and Homer L. Ferguson. Oliver P. M. Brown shall be the Secretary of the Commission.

2. In any case where the United States Shipping Board is authorized to adjust, settle or liquidate any claim (except a claim by a foreign government) now existing against the United States or the United States Shipping Board or the United States Shipping Board Emergency Fleet Corporation in connection with or incidental to the construction of any ship or ships, dry dock, wharf or terminal facilities, housing or transportation facilities or with respect to any other matter which may be referred to it by the Shipping Board, the said Claims Commission is hereby authorized on behalf of the United States Shipping Board to adjust, settle and determine the same.

3. The Claims Commission is hereby authorized to determine the amount of just compensation in any case (other than one presented by a foreign government) where such amount has not heretofore been determined according to law and where

(*a*) The United States shall have cancelled, modified, or suspended any contract or made use of, assumed, occupied, requisitioned, acquired or taken over any plant or part thereof or any ship, charter or material, or

(*b*) The President shall have requisitioned or assumed the control of any dry dock, wharf, lighterage system, or loading or discharging terminal facilities in any part of the United States or any warehouse equipment or terminal railway connected therewith, or

(*c*) The President shall have taken possession of, leased or assumed control of, and street railroad, interurban railroad or part thereof wherever operated or any cars, appurtenances, franchises, or parts thereof commonly used in connection with the operation thereof necessary for the transfer and transportation of employees of shipyards or plants engaged in the construction of ships or equipment therefor for the United States, or

(*d*) The United States Shipping Board Emergency Fleet Corporation shall have requisitioned or condemned any improved or unimproved land or any interest therein suitable for the construction thereon of houses for the use of employees and the families of employees of shipyards in which ships were being constructed for the United States, or shall have requisitioned or condemned any houses or other buildings for the use of such employees and their families together with the land on which they were erected or any interest therein, any necessary and proper fixtures or furnishings therefor or any necessary conveniences or facilities incidental thereto.

4. In case any adjustment or settlement or any determination as to just compensation which shall be made by the Claims Commission shall be agreed to by the claimant, the Commission shall report the same to the United States Shipping Board for approval, confir-

mation, modification or rejection. No payment upon any such adjustment, settlement, determination or agreement shall be made except from funds duly appropriated by Congress and available for such purpose.

5. The Construction Claims Board heretofore appointed by virtue of various general orders and resolutions is hereby abolished and the personnel thereof is hereby transferred to the Law Division.

6. This resolution shall be effective as of July 29, 1921."

That the said Claims Commission from and after its creation continued to function pursuant to the foregoing resolution, until September 30, 1921 and thereafter.

16 (3) On June 24, 1920, the Shipping Board duly adopted a resolution in the words and figures following:

"Resolved, That under the provisions of Sections 13 and 35 of the Merchant Marine Act, 1920, the Emergency Fleet Corporation be, and it is hereby, authorized to create a Division of Transportation and Housing Operations in charge of a manager reporting to the President of said Corporation, which Division shall have charge of the maintenance, operation and/or disposition of any housing projects or transportation systems owned or controlled by the Emergency Fleet Corporation, subject to such directions as may be given by the Shipping Board."

The Board of Trustees of the Fleet Corporation on June 24, 1920, duly adopted resolutions in the words and figures following:

Resolved, That effective July 1, 1920, the Passenger Transportation and Housing Division shall be known as the Division of Transportation and Housing Operations. This Division shall be in charge of a Manager reporting to the President of the Emergency Fleet Corporation.

Resolved further, That the Manager's Department shall establish a definite sales policy subject to the approval of the Board and when established, negotiate and close sales thereunder and be responsible for the preparation of mortgages and all legal instruments in connection therewith and their delivery to the Treasurer.

Resolved further, That the Manager's Department shall be responsible for the maintenance or operation of any owned or controlled project or transportation system.

Resolved further, That the responsibility for the collection of all accounts, including rents, installments, etc., shall be delegated to the Treasurer and for the keeping of accounting records and matters pertaining to the proper financial control of the Transportation and owned Housing projects or for projects not owned shall be delegated to the General Comptroller.

Resolved further, That in the instance of Realty Companies the capital stock of which is owned by the Fleet Corporation, that representatives of each of the departments interested, viz., Manager, General Comptroller and Treasurer, shall be elected to the respective Boards of Directors.

Resolved further, That in the instance of Realty Companies the capital stock of which is not owned by the Fleet Corporation, that representatives of the Manager's Department shall approve all applications for expenditures of funds of the said Realty Companies and that financial control of the accounts specified in the mortgage agreements relating to the said Realty Companies, shall be obtained by the General Comptroller through monthly reports and statements to be furnished by the Realty Companies.

Resolved further, That should the Realty Companies, the capital stock of which is not owned by the Fleet Corporation, request that the accounts of these companies be kept by the Fleet Corporation, the General Comptroller will keep these accounts, billing the respective Realty Company for the expenses in connection therewith.

17 "Resolved further, That all salaries and expenses of the Division of Transportation and Housing Operations including the salaries and expenses of the Manager's Department, the Treasurer's Department, and the General Comptroller's Department relating directly thereto and all operating and maintenance expenses in connection with projects owned by the Fleet Corporation, shall be paid from funds collected from the operation and sale of these projects."

That the said Division of Transportation and Housing Operations of the Fleet Corporation from June 24, 1920, to September 30, 1921, acted upon the foregoing resolutions and carried them into effect by exercising the power and authority conferred thereby.

(4) Sold and disposed of large quantities of ship construction material located in the various shipyards and concentration yards throughout the country, which material had become surplus and was not required for ship construction purposes after the ship construction program had been abandoned, which necessitated the suspension and cancellation by the Fleet Corporation of a large number of shipbuilding contracts. The Fleet Corporation had, during this period, as a part of its organization, a regularly organized Supply and Sales Division, composed of numerous of its representatives, at the head of which was a director, and which conducted the sales of the surplus and salvage materials above referred to. All of the funds realized from the sales of the property and material hereinbefore referred to were deposited in the United States Treasury to the credit of the Fleet Corporation and subject to its draft.

(5) Sold and disposed of large quantities of securities, consisting chiefly of promissory notes secured by mortgages, and deposited the funds realized from the sales thereof in the United States Treasury to the credit of the Fleet Corporation and subject to its draft.

(6) In general, pursued a policy of liquidating all property and assets held and controlled by it, both real and personal, (except ships), acquired during the war and deemed unnecessary in its operations following the close of the war, and after converting such property and assets into money, the money,

18

in all cases when received, was deposited in the United States Treasury to the credit of the Fleet Corporation and subject to its draft.

(7) Participated, through its legal representatives, in many receiverships and bankruptcy proceedings in various tribunals throughout the country to the end that the interests committed to it by the law and by reason of the facts herein elsewhere appearing should be protected.

11. During the period when the messages involved in this suit were sent and at all times subsequent thereto the Fleet Corporation operations have been exclusively the following: The management, operation, maintenance, repair and reconditioning of vessels; the establishment and operation of lines and routes of vessels; the completion or conclusion of construction work upon vessels; the sale of vessels; the operation and sale of housing projects, real estate, railroad and other similar property; the operation and sale of dry docks; the custody and sale of other property and materials; matters of accounting; insurance and matters pertaining to the same the operation of pier and pier facilities; the disbursement and expenditure of all moneys arising out of operations, and of funds allotted to it from appropriations by Congress; the leasing and rental of offices, warehouses, docks and storage facilities deemed essential by it for its business and for its terminal facilities; matters incidental to the foregoing, including the employment, compensation and removal of officers and employees, and in doing the foregoing the Fleet Corporation has at all times since September 30, 1921, and until January 10, 1924 conformed to the directions with regard thereto contained in the resolution of the United States Shipping Board adopted September 30, 1921, and since January 10, 1924, to those contained in the resolutions adopted that day by the said Board,
19 copies of which resolutions are hereto attached marked Exhibits "E-1" and "E-2" respectively, and to be read and considered as parts hereof.

12. The Fleet Corporation did in fact exercise the power and authority vested in it by the President in his Executive Orders dated July 11, 1917, June 18, 1918, and December 3, 1918. It constructed many vessels with moneys derived by it as set out in paragraph 14 hereof. The construction contracts in all cases provided that title to the completed vessels should be in the United States, and that the title to material assembled for the furtherance of work or set up in the shipyards should be in the Fleet Corporation, which was described in the recitals of said contract as "representing the United States of America." The Shipping Board on October 12, 1917, sent to all owners of ships enrolled under the laws of the United States, a notice effective October 15, 1917, at noon, of which copy is attached hereto and marked Exhibit "F," requisitioning said ships pursuant to Executive Order dated July 11, 1917. The Fleet Corporation on August 3, 1917, sent to the owners of American Shipyards where many other vessels were in process of construction a notice of which copy is hereto attached and marked Exhibit "G", requisitioning said vessels pursuant to the Executive Order dated July 11, 1917, and completed the construction of the

said vessels with the aforesaid moneys. By two Executive Orders dated June 30, 1917 and July 3, 1917, issued by the President under the authority of a Joint Resolution of Congress approved May 12, 1917, 40 Stat. 75, is was in substance ordered that through the Shipping Board there should be taken over to the United States the possession and title of a large number of vessels within its jurisdiction owned in whole or in part by any corporation, citizen or subject of any nation with which the United States was then at war. Pursuant to these Executive Orders many vessels owned by corporations, citizens and subjects of the German Empire were seized by the United States through the Shipping Board and thereafter
20 manned, equipped and operated directly by the Board, or, in accordance with its directions by the Fleet Corporation. An Act of Congress, approved March 4, 1921, 41 Stat. 1382, provided that, after its approval, no contract should be entered into or work undertaken for the construction of any additional vessels for the United States Shipping Board or the Fleet Corporation, and since that date no contracts have been entered into, and no further vessels have been constructed by the Fleet Corporation.

13. Of the fifty million dollars of capital stock of the Emergency Fleet Corporation, divided into five hundred thousand shares of one hundred dollars each, the "United States Shipping Board on behalf of the United States", subscribed for 499,993, and the seven individuals who were (as appears from the certificate of incorporation) named as the first trustees, subscribed for one share each. A stock subscription list showing these facts and a certificate by the Secretary of the Treasury to the effect that there was on deposit in the Treasury, to the credit of the trustees, the sum of fifty million dollars, were exhibited to the Recorder of Deeds at the time the original certificate was filed. No payments were made for capital stock by anyone other than the United States through said Shipping Board, and a total of fifty million dollars was so paid. On the first day of May, 1918, a certificate to the effect that the whole amount of the capital stock as subscribed for, fifty million dollars, had been fully paid in, was made, verified and dated that day by the President and a majority of the trustees of said Fleet Corporation, and filed with the Recorder of Deeds and recorded in Liber 34 of folio 222 of said Incorporation Record, a copy of which is hereto attached and marked Exhibit "H".

Certificates of stock were issued to the original subscribers in accordance with their respective subscriptions, that is to say, certificates aggregating 499,993 shares to "United States Shipping Board on behalf of the United States of America", and a certificate for
21 one share to each of the seven individual subscribers to enable him to qualify as a trustee of the Fleet Corporation. At the time of the issue of the said seven individual certificates, each was endorsed with an assignment to the United States Shipping Board signed by the individual subscribers respectively, and left in the stock book in the custody of the Secretary of the United States Shipping Board.

Original individual subscribers have, from time to time, resigned as trustees, and successors have been appointed and qualified as

trustees by the issue in the name of the successor of each resigning trustee of a separate certificate for one share, without any payment therefor by successor trustees, which has in each case been similarly endorsed to the United States Shipping Board and has remained in the custody of the Secretary of the Shipping Board.

All money paid to the Fleet Corporation for its aforesaid capital stock was from an appropriation of fifty million dollars from the Treasury of the United States derived from the sale of Panama Canal bonds by the Secretary of the Treasury, as directed by Section 13 of the Shipping Act of 1916.

14. All property acquired by, or the legal title to which became vested in, the Fleet Corporation has been exclusively the following:

The Fifty Million Dollars ($50,000,000) appropriated and paid for its capital stock as aforesaid, the sums of money subsequently appropriated by Congress as appears from the several Acts appropriating the same, and property acquired by the expenditure thereof, and the proceeds of the sale and the revenues derived from the use of the property so acquired.

The Fleet Corporation has always considered that its holdings of such property and its functioning were always on behalf of the United States, and that no private purpose was to be served by it thereby.

22 15. That the organization of the Fleet Corporation for the transaction of its affairs is and at all times material hereto has been substantially as follows:

At Washington:

A board of seven trustees, a President and other Executive officers;

A division in charge of a Vice-President, consisting of a Department of Maintenance and Repair, a Fuel Department, a Department of Purchases and Supplies and a Construction Department;

A division in charge of a Director of Traffic consisting of an Advertising Department, a Marine Insurance Department, and an Inland Offices Division;

A division directly in charge of the President, consisting of a Contract and Allocations Department, a Chartering Department (at New York), an Administrative Department, a Statistical Department and a Secretary's office;

A division in charge of the Director of Finance, consisting of the Comptroller's Department, the Treasury and Disbursing Office and the Collection Department;

A division in charge of the General Counsels consisting of a Legal Department, an Admiralty Division, and a Department of Claims;

The field organization outside of Washington consisting of—

Foreign offices other than European, that is in Lagos, West Africa, St. Thomas, the Virgin Islands; Rio de Janeiro, Buenos Aires, Shanghai and Hong Kong, China; Yokohama, Japan; Manila, The Philippine Islands; Honolulu, Hawaii; Tampico, Mexico; and Balboa, Canal Zone.

European districts with headquarters at London and other offices in Rotterdam, Marseilles and Constantinople.

The North Atlantic District with headquarters at New York and other offices in Boston and Philadelphia.

The Baltimore District, with headquarters in Baltimore.

The Hampton Roads District with headquarters at Norfolk.

23 The South Atlantic District with a district office at Savannah and other offices at Charleston and Jacksonville.

The Gulf District with headquarters at New Orleans and other offices at Pensacola, Mobile and Galveston.

The Pacific Coast District with headquarters at San Francisco and other offices at Portland, Oregon, and Los Angeles, and

The Puget Sound District with headquarters at Seattle, Washington.

16. From and since the time of the organization of the Fleet Corporation, the Telegraph Company has customarily accepted for transmission over its wires telegraphic messages from the Fleet Corporation, first, upon a form headed as follows: "Official Telegram U. S. Shipping Board"; then on a form bearing the imprint "Official Telegram, United States Shipping Board Emergency Fleet Corporation, Official Business, Government"; and thereafter from June 23, 1920 (including June, 1922 and July, 1922) upon a form bearing the following caption:

Original—for Dispatch.

Official Telegram—Government Rate.

United States Shipping Board Emergency Fleet Corporation

Dispatch the following immediately via:

(a) U. S. S. B. E. F. C. private wire.
(b) Western Union.
(c) Postal.

Forwarded for dispatch from (City:) ——, (State:) ——, at —— a. m.
—— p. m.
Approved for dispatch by —— ——, (Designation:) ——.
(Month:) ——, (Day:) ——, (Year:) ——.

The Telegraph Company had, during said periods, also accepted and transmitted messages of the Fleet Corporation on the form provided for commercial rate messages, bearing, however, additional words importing that they be sent at the Government rate.

24 The form most generally used in the legal commercial-rate practice was captioned as follows:

Western Union Telegram.

Class of service desired: Telegram, Day Letter, Night Message, Night Letter.

Patrons should mark an X opposite the class of service desired; otherwise the message will be transmitted as a full-rate telegram.
Receiver's No.: —; Check: —; Time filed: ——.

NEWCOMB CARLTON,
President.
GEORGE W. E. ATKINS,
1st V. P.

There appeared in the center of the immediately foregoing caption the figure of a globe, circumscribed by a band, wherein appeared the words "Telegram and Cable". Across the globe appeared a band, bearing the words "Western Union". Though the form last described is that ordinarily supplied to the public and most generally used for commercial rate business, the Telegraph Company accepts for transmission at the commercial rate messages written on any sort of a form or on blank paper or transmitted by telephone, provided only the message is one which in accordance with law and the established rates should be transmitted at commercial rates.

The three forms first described or quoted in this paragraph were the ones prepared by and on behalf of the Fleet Corporation for its use, and were the ones on which its messages were most generally written and accepted for transmission. When the form provided by the Telegraph Company for its commercial rate business was used by the agents of the Fleet Corporation, some words were customarily written on the form to indicate that the message was to be sent at the Government rate, and continuously from the time of the organization of the Fleet Corporation until May 23, 1922, the Telegraph Company accepted all messages of the Fleet Corporation and charged for their transmission at the Government rate and gave them priority over commercial messages in transmission without questioning that the Fleet Corporation was entitled to the benefit of that rate with the right of priority in transmission. On or about the date last mentioned, the Telegraph Company caused a communication to be sent to the Fleet Corporation for the first time denying the applicability of the Government rate to all Fleet Corporation messages, and giving notice that the commercial rates would be thereafter applied to such messages.

Of the messages involved in this suit, the ones of which copies are annexed to this stipulation as "Exhibit I," 1 to 19, inclusive, and to be read as a part hereof, are typical. All messages were sent out by the Fleet Corporation and paid for with funds derived by it as set forth in paragraph 14 hereof in connection with its operations as herein set forth.

17. The Telegraph Company has, continuously from the date of its acceptance of the restrictions and obligations and of the rights, powers and privileges set forth in paragraph 6 of this agreed statement of facts, extended to those Executive Departments headed by what is known as a Cabinet Officer, the Government rates for telegraphic messages with the right of priority in transmission thereof as set forth in paragraph 5 of this agreed statement of facts, and has also extended the said Government rate with the right of

priority in transmission to the telegraphic communications of the following (with the exception with regard to the Fleet Corporation elsewhere stated herein):

Interstate Commerce Commission.
United States Shipping Board. United States Shipping Board Emergency Fleet Corporation.
Federal Power Commission.
War Finance Corporation.
United States R. R. Administration.
Railroad Labor Board.
The Panama Canal.
The Federal Reserve Board.
The Federal Trade Commission.
United States Tariff Commission.
General Accounting Office.
Alien Property Custodian.
Civil Service Commission.
U. S. Bureau of Efficiency.
U. S. Employees' Compensation Commission.
Pan American Union.
Smithsonian Institution.
Inter-American High Commission—U. S. Sec.
Natl. Home for Disabled Volunteer Soldiers.
Government of the District of Columbia.
Veterans' Bureau.
Federal Board for Vocational Education.
U. S. Interdepartmental Social Hygiene Board.

26 18. And the Telegraph Company, has, from the date of its said acceptance of the restrictions and obligations, and of the rights, powers and privileges set forth in paragraph 6 of this agreed statement of facts, also extended the said Government rates as set forth in paragraphs 4 and 5 of this agreed statement of facts to the Judicial Branch of the United States Government, and to the Legislative Branch thereof.

19. On July 10, 1873, the then Attorney General of the United States, by opinion transmitted to the then Postmaster General of the United States, rendered the decision which is reported in 14 Opinions of the Attorneys General, at p. 278, which opinion is to be read as and considered a part hereof as though set out at large herein and the quotation in said opinion from a letter dated June 20, 1873 from the President of the Telegraph Company to the Postmaster General is correct. The Telegraph Company has permitted the extension of the Government rate to the bodies hereinbefore in numbered paragraph 17 enumerated, upon application for the said Government rate made by them or on their behalf, as a matter of course, and without litigation in the courts or other final determination of the legality of the claims for Government rates. In agreeing that no final determination has been made, however, the parties do not intend to countervail such facts herein elsewhere appearing, if any, to which might be applied the rule of practical construction.

20. In addition to the facts hereinbefore recited and agreed upon, all facts of which the court may take judicial notice, shall be considered as being included in and forming a part of this statement.

FRANCIS R. STACK,
PAUL E. LESH,
Attorneys for Plaintiff.
E. M. ALLISON, Jr.,
GEOFFREY GOLDSMITH,
CHAUNCEY G. PARKER,
Attorneys for Defendant.

Dated August 30, 1924.

27 EXHIBIT "A"

Rates of Pay for Communications by Telegraph

Order No. 6155

Post Office Department,
Washington, D. C., July 1, 1921.

Pursuant to the authority vested in the Postmaster General by the act of Congress entitled "An act to aid in the construction of telegraph lines, and to secure to the Government the use of the same for postal, military, and other purposes, approved July 24, 1866," and by the Revised Statutes of the United States, Title LXV, I hereby fix the rates at which such communications as the said statutes prescribe (not including those passing over circuits established by the Chief of the Weather Bureau, Department of Agriculture) shall be sent during the fiscal year beginning July 1, 1921, and terminating June 30, 1922, by the several companies within the effect of said statutes, as follows:

All messages shall be subject in all respects to the prevailing commercial count of chargeable words, and the address and signature of domestic messages shall be transmitted free in accordance with the commercial practice.

For day messages the charge shall be forty (40) per centum of the charge for a full-rate commercial telegram of the same length between the same points in the United States. The minimum charge for any day message shall be twenty-five (25) cents.

For day letters, night messages, and night letters the charge shall be forty (40) per centum of the charge for a commercial day letter, night message, or night letter, as the case may be, of the same length, between the same points in the United States. The minimum charge for any night message shall be twenty (20) cents; for any night letter thirty (30) cents; and for any day letter, forty-five (45) cents, except that the rate charged for a Government day letter or night letter shall not in any case exceed the amount charged for a commercial day letter or night letter of the same length between the same points.

For the purpose of determining the charges above provided, the charge for the transmission of a commercial message of the same class and length and between the same points should first be ascertained and the Government rate should then be computed at forty (40) per centum of the commercial charge so ascertained.

In cases where the charge for a Government message, thus determined, shall include a fraction of a cent, such fraction, if less than one-half, is to be disregarded; if one-half or more, it is to be counted as one (1) cent.

In cases where the message in transit to destination passes over the lines of two or more connecting companies subject to this order each such company shall receive for its share of the transmission within the United States the above-designated percentage of its portion of the established through tolls to destination if to a point in the United States, or to the border if the destination is in Canada or Mexico.

In the case of messages from the United States to points in Canada or Mexico, the above-designated percentages shall apply with respect to the transmission within the United States, the basis being the appropriate prevailing commercial rate between the point of origin in the United States and the border.

All Government cable messages take the prevailing commercial cable count through, from point of origin to destination. The Western Union and the Commercial Companies charge one-half the normal cable rate at cable count for trans-Atlantic transmission of the United States Government messages over their cables. The rate for the inland transmission within the United States of Government cable messages to or from all foreign countries, except Mexico, the normal connection with which is by cable, shall be one-half the inland zone word rate charged on commercial cablegrams between the same points.

* * * * * * *

28 WILL H. HAYS,
Postmaster General.

29 EXHIBIT "B"

Rates of Pay for Communications by Telegraph

Order No. 7813

Post Office Department,
Washington, D. C., July 1, 1922.

Pursuant to the authority vested in the Postmaster General by the act of Congress entitled "An act to aid in the construction of telegraph lines, and to secure to the Government the use of the same for postal, military, and other purposes," approved July 24, 1866, and by the Revised Statutes of the United States, Title LXV, I hereby fix the rates at which such communications as the said statutes pre-

scribe (not including those passing over circuits established by the Chief of the Weather Bureau, Department of Agriculture) shall be sent during the fiscal year beginning July 1, 1922, and terminating June 30, 1923, by the several companies within the effect of said statutes, as follows:

All messages shall be subject in all respects to the prevailing commercial count of chargeable words, and the address and signature of domestic messages shall be transmitted free in accordance with the commercial practice.

For day messages the charge shall be forty (40) per centum of the charge for a full-rate commercial telegram of the same length between the same points in the United States. The minimum charge for any day message shall be twenty-five (25) cents.

For day letters, night messages, and night letters the charge shall be forty (40) per centum of the charge for a commercial day letter, night message, or night letter, as the case may be, of the same length, between the same points in the United States. The minimum charge for any night message shall be twenty (20) cents; for any night letter, thirty (30) cents; and for any day letter, forty-five (45) cents. An overnight message shall be charged for as a night message or as a night letter according to which of these two classifications shall produce the lower charge for the particular message. In no case, however, shall the rate charged for a Government message exceed the amount charged for a commercial message of the same class of service and the same length between the same points.

For the purpose of determining the charges above provided, the charge for the transmission of a commercial message of the same class and length and between the same points should first be ascertained and the Government rate should then be computed at forty (40) per centum of the commercial charge so ascertained.

In cases where the charge for a Government message, thus determinded, shall include a fraction of a cent, such fraction, if less than one-half, is to be disregarded; if one-half or more, it is to be counted as one cent.

In cases where the message in transit to destination passes over the lines of two or more connecting companies subject to this order each such company shall receive for its share of the transmission within the United States the above-designated percentage of its portion of the established through tolls to destination if to a point in the United States, or to the border if the destination is in Canada or Mexico.

In the case of messages from the United States to points in Canada or Mexico, the above-designated percentages shall apply with respect to the transmission within the United States, the basis being the appropriate prevailing commercial rate between the point of origin in the United States and the border.

All Government cable messages take the prevailing commercial cable count through from point of origin to destination. The Western Union and the commercial companies charge one-half the normal cable rate at cable count for the trans-Atlantic transmission of United States Government messages over their cables. The rate

for the inland transmission within the United States of Government cable messages to or from all foreign countries, except Mexico, the normal connection with which is by cable, shall be one-half the inland zone word rate charged on commercial cablegrams between the same points.

* * * * * * *

30 HUBERT WORK,
Postmaster General.

31 EXHIBIT "B-1."

Executive Office, Western Telegraph Company, 145 Broadway, New York.

J. H. Wade, President, H. Sibley, Wm. Orton, N. Green, Vice-Pres'ts, O. H. Palmer, Sec'y & Treas'r.

June 7th, 1867.

SIR,

I have the honor to transmit herewith the acceptance by the Western Union Telegraph Company of the Act of Congress, entitled "An Act to aid in the Construction of Telegraph Lines and to Secure to the Government the use of the same for postal, military and other purposes," approved July 24, 1866, with all the powers, privileges, restrictions and obligations conferred and required thereby.

It is intended to be in full compliance with the terms of said Act, and if not in conformity with the rules of your Department I respectfully ask to be advised in what particular it is insufficient that it may be corrected.

I take the liberty of enclosing duplicates of the acceptance and shall feel obliged by your certificate on one of them of the
32 receipt and filing of such acceptance in conformity with the act of Congress and its return to me.

I have the honor to be,
Respectfully, your obt. servt.,

O. H. PALMER, *Secy.*

To Hon. Alex. W. Randall, Postmaster General, Washington, D. C.

33 [Endorsed:] 9. June 8, 1867. Miscellaneous. O. H. Palmer, Esq., Secy. "Western Un. Tel. Co.," New York. Transmits duplicate acceptance by above Co. of provisions of Act of 24 July, 1866. July 12, 1867. Wrote Mr. Palmer that one of said acceptances was filed in this Dept. as required by law; and returned the other so endorsed. (C. C. R.-329). Dec. 16, 1870. Hon. John Hill, M. C., refers letter from D. W. Carpenter, making application for docs. on file in this Dept. on above subject. Dec. 16, 1870. Wrote Hon. J. Hill forwarding certified copies of same. June 5,

1872. Manager of the Western Union Tel. Co., Washington. Sends copy of acceptance of provisions of Act of July 24, 1866, & asks that it may be certified to as correct copy under seal of the Dept. & returned. Also desires certified copy of P. M. G's order establishing rates for gov't. tel. messages, in 1871. June 8, 1872. Wrote Mr. Whitney sending certified copies as desired. Nov. 26, 72. Counsel W. U. Tel. Co., Balt. asks for certified copy of acceptance. Nov'br 27, 72. Sent.

34 Western Union Telegraph Company.

Meeting of the Board of Directors at the Executive Office, 145 Broadway, New York, June 5th, 1867.

Resolved, that this Company does hereby accept the provisions of the Act of Congress entitled "an Act to aid in the construction of Telegraph Lines, and to secure to the Government the use of the same for postal, military, and other purposes," approved July 24, 1866, with all the powers, privileges, restrictions and obligations conferred and required thereby; and that the Secretary be and is hereby authorized and directed to file this resolution with the Postmaster General of the United States, duly attested by the signature of the Acting President of the Company, and the seal of the corporation in compliance with the fourth section of said Act of Congress, adopted unanimously.

HIRAM SIBLEY,
Acting President of Western Union Telegraph Company.
[SEAL.]
O. H. PALMER,
Secy. W. U. Tel. Co.

35 [Endorsed:] Filed June 8, 1867. Jos. H. Blackfan, Chief Clerk.

36 EXHIBIT "C."

This agreement and stipulation made this nineteenth day of October, A. D., 1922, by and between the United States Shipping Board Emergency Fleet Corporation and The Western Union Telegraph Company, hereinafter called the Fleet Corporation and the Telegraph Company, respectively,—

Witnesseth, that in consideration of the mutual agreements hereinafter contained said parties agree and stipulate each with the other as follows:

1. That both parties will expedite to a final determination by the Supreme Court of the United States a proposed suit by the Telegraph Company to be brought in the Supreme Court in the District of Columbia against the Fleet Corporation, claiming compensation at the commercial rate for transmitting certain messages from and to the Fleet Corporation billed at Washington during the months of June and July, 1922.

2. That pending the final determination of the matters in controversy in the said suit as aforesaid the Telegraph Company will

render its bills showing thereon the amount charged at the commercial rate, also the amount of charge at the government rate, and the difference between the total of each monthly bill at commercial and government rates, and will attach to the bills so rendered, as vouchers, the originals of messages filed with it, to be charged at the point of origin, and the carbon copies of messages to be charged at the point of destination, as heretofore in the case of bills rendered at the government rate. Said bills are to be immediately rendered covering the months of June and July, 1922, and bills are thereafter to be rendered monthly in like manner.

37 3. Pending the final determination of the above mentioned suit, as aforesaid, the Fleet Corporation will promptly audit the said bills both at the commercial rate and at the government rate, and when so audited and found correct pay the same at the government rate, and promptly deliver to the Telegraph Company a written statement as to each such bill of the amount of the difference between the totals at commericial rates and at government rates, in order that there may be a current account of these differences agreed upon by both parties so as to obviate the necessity of re-rating an accumulation of accounts at the termination of the suit, should the suit be decided in favor of the Telegraph Company.

4. That pending the final determination of said suit as aforesaid the payment of the said bills at the government rate and the receipt thereof by the Telegraph Company shall be without prejudice to its claim, if any, for the balances which would be or are due at the commercial rate. With respect to the accumulated monthly differences aforesaid, except as the law applicable to the case may be changed, the Fleet Corporation and the Telegraph Company will settle their accounts in accordance with the final determination of the suit aforesaid.

5. That pending the final determination of said suit, the Telegraph Company will not because of the non-payment of the difference between the commercial rate and the government rate, suspend the monthly credit of the Fleet Corporation, provided the agreements herein made are currently performed.

6. That nothing in this agreement contained shall affect or conclude the right of the United States Shipping Board Emergency Fleet Corporation to claim that any or all of said messages so

38 transmitted were transmitted to and/or from the Emergency Fleet Corporation, its officers, agents and/or employees while acting solely as the agent and/or instrumentality of the United States Shipping Board, and/or the United States.

In witness whereof the said parties have caused these presents to be signed in their respective corporate names and sealed with their corporate seals the day and year first hereinbefore mentioned.

UNITED STATES SHIPPING BOARD
EMERGENCY FLEET CORPORATION.

(Sgd.) By J. B. SMULL,
President.

Attest:

(Sgd.) CLIFFORD W. SMITH.

THE WESTERN UNION TELEGRAPH COMPANY,

(Sgd.) By J. C. WILLEVER,
Vice-President.

Attest:

(Sgd.) A. F. BURLEIGH,
Secretary.

Approved:

(Sgd.) SANFORD H. E. FREUND,
General Counsel.

Approved as to form:

F. R. S.,
General Attorney.

J. J. S. 106-22.

39 EXHIBIT "D."

Certificate of Incorporation.

Know all Men by These Presents, That we, the undersigned, a majority of whom are residents of the District of Columbia desiring to form a corporation under sub-chapter four (4) of the incorporation laws of the District of Columbia, and in pursuance of Section Eleven (11) of an Act of Congress entitled "An Act to Establish a United States Shipping Board," approved September 7, 1916, do hereby certify:

First. That the corporate name of this Company shall be *United States Shipping Board Emergency Fleet Corporation* and the object for which it is formed is — the purchase, construction, equipment, lease, charter, maintenance and operation of merchant vessels in the commerce of the United States —— and in general to do and to perform every lawful act and thing necessary or expedient to be done or performed for the efficient and profitable conducting of said business as authorized by the laws of Congress, and to have and to exercise all the powers conferred by the laws of the District of Columbia upon corporations under said sub-chapter four (4) of the incorporation laws of the District — Columbia.

Second. That the existence of this corporation shall be perpetual.

Third. That the capital stock of this corporation shall be Fifty Million dollars ($50,000,000.00), divided into shares of the par value of One Hundred dollars ($100.00) each.

Fourth. That the number of trustees who shall manage the concerns of the company for the first year, or until their successors are elected, a majority thereof being citizens of the
40 District of Columbia, shall be seven (7); namely,

Names.	Residences.
George W. Goethals	43 Exchange Place, New York, N. Y.
William Denman	1020 Merchants Exchange Bldg., San Francisco, Cal
John A. Donald	18 Broadway, New York, N. Y.
William L. Soleau	1361 Harvard St., N. W., Washington, D. C.
Richard H. Bailey, Jr.	1439 Fairmont St., N. W., Washington, D. C.
Timothy C. Abbott	2023 Park Road, N. W., Washington, D. C.
Ellsworth P. Bertholf	1463 Harvard Terrace, Washington, D. C.

The Board of trustees, by the affirmative vote of a majority of the whole board, may appoint from the trustees an executive committee of three (3) members, of which a majority shall constitute a quorum, and to such extent as may be provided in the by-laws, such committee shall have and may exercise all or any of the powers of the board of trustees.

Fifth. That the place in the District of Columbia in which the operations of the company are to be carried on is at Munsey Building in the City of Washington, District of Columbia.

This corporation reserves the right to amend, alter, or change any provision contained in this Certificate of Incorporation, in any manner prescribed by statute, and all rights conferred on stockholders herein granted are subject to this reservaion.

In Witness Whereof we have hereunto affixed our signa-
41 tures and seals, this 16th day of April, A. D. 1917.

WILLIAM DENMAN.	[SEAL.]
JOHN A. DONALD.	[SEAL.]
GEO. W. GOETHALS.	[SEAL.]
T. C. ABBOTT.	[SEAL.]
E. P. BERTHOLF.	[SEAL.]
RICHARD H. BAILEY, JR.	[SEAL.]
WILLIAM L. SOLEAU.	[SEAL.]

I, Edward P. Harrington, a Notary Public in and for the District of Columbia, do hereby certify that William Denman, John A. Donald, Geo. W. Goethals, T. C. Abbott, E. P. Bertholf, Richard H. Bailey, Jr., and Wm. L. Soleau parties to the foregoing and annexed Certificate of Incorporation bearing date of the 16th day of April, 1917, personally appeared before me in this District, this 16th day of April, 1917, and the said William Denman, John A. Donald, Geo. W. Goethals, T. C. Abbott, E. P. Bertholf, Richard H. Bailey, Jr., and William L. Soleau being well known to me as the persons who executed the said Certificate of Incorporation acknowledged the same to be their act and deed.

In witness whereof, I have hereunto set my hand and seal this 16th day of April, 1917.

[NOTARIAL SEAL.] EDWARD P. HARRINGTON,
Notary Public, District of Columbia.

My commission expires January 30, 1922.

42 Office of the Recorder of Deeds, District of Columbia.

This is to certify that the foregoing is a true and verified copy of the Certificate of Incorporation of the "United States Shipping Board Emergency Fleet Corporation," and of the whole of said Certificate of Incorporation, as filed in this Office the 16th day of April, 1917, and recorded in Liber 33, folio 272, et seq., one of the Incorporation Records of the District of Columbia.

In testimony whereof, I have hereunto set my hand and affixed the seal of this Office this 31st day of May, A. D. 1923.

[SEAL.] ARTHUR G. FROE,
Recorder of Deeds, D. C.

43 EXHIBIT "D-1".

This is to certify that at a meeting of the stockholders of the United States Shipping Board Emergency Fleet Corporation, held at its office in Washington, D. C., on August 3rd, 1917, at which meeting all but four shares of the capital stock was represented, and the notice required by Statute having been waived by all stockholders, Mr. Edward N. Hurley was elected Chairman and Mr. Lester Sisler Secretary. On motion duly made it was unanimously resolved:

"That the certificate of incorporation of this corporation be amended in the manner provided in the laws of the District of Columbia by substituting for the last paragraph of the fourth section thereof, the following:

'The Board of Trustees, by the affirmative vote of a majority of the whole Board, may appoint from the Trustees an Executive Committee of three (3) members and a Transportation Committee of three (3) members, of which a majority shall constitute a quorum and to such extent as may be provided in the by-laws, said Committee shall have and may exercise all or any of the powers of the Board of Trustees.'"

EDWARD N. HURLEY,
President.

LESTER SISLER,
Secretary.

I, Edward N. Hurley, being duly sworn say that the above is a true and correct transcript of the minutes of the meeting.

EDWARD N. HURLEY.

Subscribed and sworn to before me this third day of August, 1917.
[NOTARIAL SEAL.] W. L. SOLEAU,
Notary Public.

44 I, W. L. Soleau, a Notary Public in and for the District of Columbia, do certify that Edward N. Hurley, President of the United States Shipping Board Emergency Fleet Corporation, party to the foregoing and annexed certificate, dated August 3rd, 1917, being personally and well known to me, as the person who executed the above certificate, personally appeared before me this 7th day of August, 1917 and acknowledged same to be his act and deed.

[NOTARIAL SEAL.] W. L. SOLEAU,
Notary Public.

45 Office of the Recorder of Deeds, District of Columbia.

This is to certify that the foregoing is a true and vertified copy of the Certificate of Amendment of the Certificate of Incorporation of the "United States Shipping Board Emergency Fleet Corporation," and the whole of said Certificate of Amendment as filed in this Office the 8th day of Aug., A. D. 1917, and recorded in Liber 33, folio 371, et seq., one of the Incorporation Records of the District of Columbia.

In testimony whereof, I have hereunto set my hand and affixed the seal of this Office this 31st day of May, A. D. 1923.

[SEAL.] ARTHUR G. FROE,
Recorder of Deeds, D. C.

46 *Certificate to Officers.*

Supreme Court of the District of Columbia.

DISTRICT OF COLUMBIA, *To wit:*

I, Walter I. McCoy, Chief Justice of the Supreme Court of the District of Columbia, do hereby certify that Arthur G. Froe, whose genuine signature is subscribed to the foregoing certificate, was, at the time of signing and attesting the same, Recorder of Deeds, District of Columbia and that said attestation by him is in due form, and that he is the proper officer to make the same.

Witness my hand and seal this 1st day of June, 1923.

[SEAL.] WALTER I. McCOY,
Chief Justice.

DISTRICT OF COLUMBIA, *To wit:*

I, Morgan H. Beach, Clerk of the Supreme Court of the District of Columbia, hereby certify that Walter I. McCoy, whose genuine signature is subscribed to the foregoing certificate, was, at the time of signing and attesting the same, Chief Justice of said Court, duly commissioned and qualified.

Witness my hand and the seal of said Court this 1st day of June, 1923.

[SEAL.] MORGAN H. BEACH,
Clerk.
By CHAS. B. COFLIN,
Assistant Clerk.

47 EXHIBIT "D-2" AND "D-3."

Extract from Proceedings of the United States Shipping Board.

April 14, 1917.

Upon motion duly made, seconded and carried, the following Resolution was adopted:

Whereas, In the judgment of the Board it is necessary to carry out the purpose of the Act to Establish a United States Shipping Board, approved September 7, 1916, that a corporation be formed under the laws of the District of Columbia, for the purchase, construction, equipment, lease, charter, maintenance, and operation of merchant vessels in the commerce of the United States, be it therefore

Resolved, In pursuance of authority conferred on the Board by Section 11 of the said Act, that a corporation for the above purpose be formed, to be known as the United States Shipping Board Emergency Fleet Corporation, with a capital stock of Fifty Million Dollars ($50,000,000), and be it further

Resolved, That the Chairman be authorized to procure the necessary papers to be drawn up, and acts to be done, in accordance with the laws of the District of Columbia, for the formation of the said corporation.

Upon motion duly made, seconded and carried, the following Resolution was adopted:

Whereas, It is proposed to organize a corporation under the laws of the District of Columbia, to be known as the United States Shipping Board Emergency Fleet Corporation, with a capital stock of $50,000,000.00 of the par value of $100 a share,

Resolved, That the Board do subscribe to 499,993 shares of stock of the said corporation, for and on behalf of the United States, and be it further

Resolved, That the Chairman be authorized to sign on behalf of the Board the necessary subscription papers.

48 EXHIBIT "E-1."

United States Shipping Board,
Washington.

Resolution Adopted by the United States Shipping Board Sept. 30, 1921.

Whereas, The Merchant Marine Act, 1920, provides that the power and authority thereby vested in the United States Shipping

Board may be exercised either directly by the Board, or by it through the United States Shipping Board Emergency Fleet Corporation, except as therein otherwise specifically provided, and

Whereas, In the opinion of the Shipping Board, the executive and personnel organization of the Emergency Fleet Corporation has been completed to such a standard of efficiency as to make it desirable that the United States Shipping Board should exercise through the United States Shipping Board Emergency Fleet Corporation various administrative powers and functions, thus making it possible for the United States Shipping Board to devote its attention to study and determination of the broad and constructive questions of policy relating to the maintenance, development and encouragement of the American Merchant Marine, under the powers and duties imposed upon the United States Shipping Board by law,

Therefore, be it resolved, That it is the sense of the United States Shipping Board that its Chairman should retire as President, and that its members should retire as Trustees of the said United States Shipping Board Emergency Fleet Corporation, and that there should forthwith be elected a separate President and a separate Board of Trustees for the said United States Shipping Board Emergency Fleet Corporation; and

Be it further resolved, That the power and authority vested in the Shipping Board by the Merchant Marine Act, 1920, shall, until otherwise ordered by the Board, be exercised by it through the United States Shipping Board Emergency Fleet Corporation in the following matters, and to the extent and in the manner hereinafter provided:

(1) The operation, maintenance, repair and reconditioning of vessels provided that no established line shall be discontinued, or new line established, or allocation of passenger vessels made, without the approval of the United States Shipping Board.

(2) The completion or conclusion of any construction work upon vessels which has theretofore been begun or has been authorized by the United States Shipping Board.

(3) The sale of vessels (except to aliens) at such prices and on such terms and conditions as the United States Shipping Board may prescribe.

(4) The operation and sale of housing projects, real estate, railroad and other similar property, subject to confirmation by the United States Shipping Board before any final contract of sale is made.

(5) The operation and sale of dry docks; all sales to be
49 subject to such terms and prices as may be established by the United States Shipping Board.

(6) The custody and sale of all other property and materials.

(7) All accounting for the United States Shipping Board Emergency Fleet Corporation.

(8) Insurance and matters pertaining to the same.

(9) The operation of all piers and pier facilities: provided that

no pier or pier facilities shall be leased without prior authorization from the United States Shipping Board.

(10) The leasing and rental of offices, warehouses, docks and storage facilities.

(11) All matters incidental to any of the foregoing, including the execution of contracts, charters, bills of sale, leases, deeds and other instruments necessary or convenient to the exercise of the power and authority hereby conferred upon the United States Shipping Board Emergency Fleet Corporation; and

Be it further resolved, That an accurate record shall be made of the proceedings of every meeting of the United States Shipping Board Emergency Fleet Corporation and a summary thereof transmitted to the Chairman and each Commissioner of the United States Shipping Board, and that notices of meetings of the Board of Trustees of said Emergency Fleet Corporation be duly sent to each member of the United States Shipping Board; and

Be it further resolved, That the control of the United States Shipping Board Emergency Fleet Corporation shall remain with the United States Shipping Board, and that the President and each of the Trustees of the United States Shipping Board Emergency Fleet Corporation be and hereby are required to deposit with the Secretary of the United States Shipping Board their several resignations, for acceptance at the pleasure of the United States Shipping Board, and to deliver to the Secretary of the United States Shipping Board their several qualifying shares of stock in the United States Shipping Board Emergency Fleet Corporation, duly endorsed in blank for transfer.

I hereby certify this — day of ——, 192-, that the foregoing is a true and correct copy of a resolution adopted by the United States Shipping Board at a meeting held September 30, 1921, as shown by the official Minutes of the United States Shipping Board in the custody of the Secretary.

—— ——,
Secretary.

50 EXHIBIT "E-2."

United States Shipping Board,
Washington.

Resolution Adopted by the United States Shipping Board Jan. 10, 1924.

The resolution of the United States Shipping Board passed September 30th, 1921 is hereby amended to read as follows:

Whereas, The Merchant Marine Act, 1920, provides that the power and authority thereby vested in the United States Shipping Board may be exercised either directly by the Board, or by it through the United States Shipping Board Emergency Fleet Corporation, except as therein otherwise specifically provided; and

Whereas, In the opinion of the Shipping Board, the executive and
onnel organization of the Emergency Fleet Corporation is
pped to efficiently exercise through the United States Shipping
rd Emergency Fleet Corporation various administrative powers
functions, thus making it possible for the United States Ship-
Board to devote its attention to study and determination of the
d and constructive questions of policy relating to the mainten-
, development and encouragement of the American Merchant
ine, under the powers and duties imposed upon the United States
ping Board by law.

herefore, be it resolved, That it is the sense of the United States
ping Board that neither its Chairman nor any member of the
rd should hold any office of the Emergency Fleet Corporation,
that no member of any department of the Shipping Board
ld hold any office of the Emergency Fleet Corporation unless
Shipping Board and the Board of Trustees of the Emergency
t Corporation concur.

e it further resolved, That the power and authority vested in the
ping Board by the Merchant Marine Act, 1920, shall be exer-
d by it through the Emergency Fleet Corporation in the follow-
matters, and to the extent and in the manner hereinafter pro-
d:

The selection, employment or removal of all officers and em-
ees of the Emergency Fleet Corporation and their compensation
be under the control of the Board of Trustees and — or officers
at corporation in the manner provided for in the By-Laws of
corporation, provided, however, that the salaries and other
pensation of the officers and of the Trustees shall be subject to the
oval of the Board; and provided further: the employment of
sel and all litigation shall remain under the control of the
ping Board, which shall assign to the Emergency Fleet Cor-
tion such attorneys as may be needed by the President of the
rgency Fleet Corporation for the proper conduct of its busi-
ness.

2. The management, operation, maintenance and repair of vessels; including ordinary re-conditioning of vessels.

The establishment and operation of lines and routes which the
ping Board, under the powers conferred upon it by Section 7 of
Merchant Marine Act, 1920, has heretofore authorized and di-
d or may hereafter authorize and direct; no established line
be discontinued, or new line established, or allocation of pas-
er vessels made, without the approval of the United States Ship-
Board.

The completion or conclusion of any construction work upon
ls which has heretofore been begun or has been authorized by
nited States Shipping Board.

The sale of vessels (except to aliens) at such prices and on such
s and conditions as the United States Shipping Board may pre-
e or approve.

6. The operation and sale of housing projects, real estate, railroad and other similar property, subject to confirmation by the United States Shipping Board before any final contract of sale is made.

7. The operation and sale of dry docks; all sales at such prices and on such terms and conditions as the United States Shipping Board may prescribe or approve.

8. The custody and sale of all other property and materials.

9. All accounting for the Emergency Fleet Corporation.

10. The insurance of vessels and other property in its custody; and matters pertaining to insurance; subject, however, to the control and supervision of the Board, with respect to the placing of insurance.

11. The operation of piers and pier facilities owned or leased by the Shipping Board and at present used by its vessels; and the operation of such other piers and pier facilities as may be transferred to it by the Shipping Board.

12. The disbursement and expenditure of all moneys arising out of operations; and such other funds as may be allotted to it from appropriations heretofore made to the Shipping Board; or which may hereafter be made the Shipping Board; and also moneys arising from appropriations hereafter made by Congress for the exclusive use of the Emergency Fleet Corporation.

13. The leasing and rental of offices, warehouses, docks and storage facilities deemed essential by it for its business and for its terminal facilities; but no lease for a period exceeding one year shall be made without the consent of the Shipping Board.

52 14. The settlement, including payments or collections, of all matters arising out of the above-mentioned powers before or after the date of this resolution.

15. All matters incidental to any of the foregoing powers, including the execution of contracts, charters, bills of sale, leases and other instruments necessary or convenient to the exercise of such powers are hereby conferred upon the Emergency Fleet Corporation.

Be it further resolved, That an accurate record shall be made of the proceedings of every meeting of the Trustees of the Emergency Fleet Corporation and a summary thereof transmitted to the Chairman and each Commissioner of the Shipping Board.

Be it further resolved, That the voting power upon the stock and the control of the United States Shipping Board Emergency Fleet Corporation shall remain with the United States Shipping Board, according to law; and the President and each of the Trustees of the Emergency Fleet Corporation shall deliver to the Secretary of the Shipping Board their several qualifying shares of stock in the United States Shipping Board Emergency Fleet Corporation, duly endorsed in blank for transfer; and the officers of the Emergency Fleet Corporation shall deliver to the President of the Emergency Fleet Corporation their several resignations for acceptance at his pleasure; and the President and Trustees of the Emergency Fleet Corporation shall deliver to the Secretary of the Shipping Board their several resignations for acceptance at the pleasure of the Shipping Board.

Be it further resolved, That in passing this resolution the United States Shipping Board declares that it is its policy to delegate to the Emergency Fleet Corporation, all power, authority and control essential to the full and efficient operation by it of all lines at present operated or which may be hereafter authorized. All vessels now being operated are hereby allocated to the Emergency Fleet Corporation; and, other vessels of the Board will be allocated to it when reasonably required for the equipment of present lines or lines hereafter authorized. All vessels of the Shipping Board not in use, are also placed in the custody and care of the Emergency Fleet Corporation.

Be it further resolved, That nothing herein contained shall be construed as a transfer of title or ownership of vessels, docks, or other property, real or personal, belonging to the United States; the possession and control by the Emergency Fleet Corporation of any vessels or other property delivered to it under this resolution shall be solely that of an agent, with limited powers. All contracts, and agreements made by the United States Shipping board Emergency Fleet Corporation shall clearly show that the same are contracts and agreements of the United States Shipping Board acting through the United States Shipping Board Emergency Fleet Corporation as its authorized agent.

53 Be it further resolved, The right and duty of the Shipping Board to exercise any and all powers of supervision and control vested in or imposed upon it by law remain in full force and effect.

Be it further resolved, That all resolutions, general or special orders or office memoranda of the United States Shipping Board heretofore passed, inconsistent with the resolution of September 30, 1921, as amended hereby, are repealed, in so far as they conflict with the provisions of this resolution.

54 EXHIBIT "F."

United States Shipping Board,

Washington

October 12, 1917.

The United States Shipping Board hereby gives notice to all owners of ships registered and enrolled under the laws of the United States that the requisition of all American steamers described below and of which previous announcement has been made, will become operative and effective on October 15, 1917, at noon.

1. The ships affected by said requisition and included therein are (*a*) All cargo ships able to carry not less than 2,500 tons total deadweight, including bunkers, water, and stores.

(*b*) All passenger steamers of not less than 2,500 tons gross register.

2. (*a*) As to all steamers in or bound to American ports on October 15, 1917, requisition becomes effective after discharge of inward cargo and ship is put in ordinary good condition.

(*b*) As to steamers which have started to load their outward cargo, requisition becomes effective at noon on October 15, 1917, and accounts as to hire and expenses will be adjusted from time steamer began to load.

3. Steamers, trading to and from American ports, that have sailed on their voyage prior to October 15, 1917, at noon, are to complete that voyage as prompty as possible and report for requisitioning.

4. Steamers that are occupied in trades between foreign ports shall be requisitioned as of October 15, 1917, at noon, and accounts adjusted accordingly.

5. (*a*) Owners, whose steamers are operating in their regular trades, are to continue the operation of their steamers for account of the Government, as they have been doing for themselves, until they receive further instructions.

(*b*) Owners, whose steamers are chartered to others, will apply to the Shipping Board for instructions regarding the future employment of said steamers.

(Signed) BAINBRIDGE COLBY,
Commissioner.

55 EXHIBIT "G."

By virtue of an Act of Congress, approved June 15, 1917, entitled "An Act making appropriations for the Military and Naval Establishments on account of war expenses for the fiscal year ending June thirtieth, nineteen hundred and seventeen, and for other purposes" and by authority delegated to the United States Shipping Board Emergency Fleet Corporation under Executive Order of the President, dated July 11, 1917, all power-driven cargo-carrying and passenger ships, above 2,500 tons D. W. capacity, under construction in your yard and certain materials, machinery, equipment, outfit, and commitments for materials, machinery, equipment and outfit necessary for their completion are hereby requisitioned by the United States.

On behalf of the United States, by virtue of said Act and said Order, you are hereby required to complete the construction of said requisitioned ships under construction and will prosecute such work with all practicable dispatch.

The compensation to be paid will be determined hereafter and will include ships, material and contracts requisitioned.

You will furnish immediately general plans and detail specifications of the ships requisitioned, and copies of contracts and all supplemental agreements in relation thereto and full particulars as to owner, date of completion, payments made to date, amounts still due, and any other information necessary to a fair and just determination of the obligations of the Emergency Fleet Corporation in taking over these ships and contracts.

You will report immediately whether any additional contracts are under consideration and their character and extent, and will not

enter into any additional contracts or commitments with respect to merchant tonnage without express authority from this Corporation.

(Signed) W. L. CAPPS.
General Manager, United States Shipping Board Emergency Fleet Corporation.

Washington, D. C., August 3, 1917.

56 EXHIBIT "H."

United States Shipping Board Emergency Fleet Corporation.

Certificate of Payment of Capital Stock.

We, the undersigned, the President and a majority of the Trustees of the United States Shipping Board Emergency Fleet Corporation, a corporation, organized and existing under the laws of the District of Columbia, do hereby certify that the whole amount of the capital stock fixed and limited by the said Company, to wit: Fifty Million Dollars ($50,000,000), has been fully paid in.

In witness whereof we have hereto set our hands and seals this first day of May, 1918.

[SEAL.] [L. S.]	(Sgd.)	EDWARD N. HURLEY, *President;*
[SEAL.] [L. S.]	(Sgd.)	BAINBRIDGE COLBY,
[SEAL.] [L. S.]	(Sgd.)	JOHN A. DONALD,
[SEAL.] [L. S.]	(Sgd.)	CHAS. R. PAGE,

A Majority of the Trustees.

DISTRICT OF COLUMBIA, *ss:*

Before me, a Notary Public, within and for the said District, personally appeared the said Edward N. Hurley, Bainbridge Colby, John A. Donald, and Charles R. Page, to me personally known and known by me to be the President and a majority of the Trustees of the United States Shipping Board Emergency Fleet Corporation, and severally made oath that the statements contained in the foregoing instrument are true.

Given under my hand and seal this first day of May, 1918.

[Lester Sisler, Notarial Seal.]

(Sgd.) LESTER SISLER,
Notary Public.

O. K.
(Sgd.) J. F. C.

57 Copy.

EXHIBIT "I" 1 TO 19, INC.

Vice-President Farley.

Washington, D. C., June 9, 1922.

E. M. Bull, A. H. Bull and Company,
40 West Street,
New York City:

Our calculations show that the deadweight on the Nethnor Mason City and Macomet total fifteen thousand three hundred ninety-four tons stop I am willing to recommend to the Board the deadweight of these vessels be ascertained by any one of the following surveyors—Stevenson Taylor Frank Martin, D. H. Cox or Robert Haight—and that his findings be final and binding on both parties provided you will agree to pay thirty dollars per ton on the total deadweight as determined by said surveyor less the seven thousand dollars insurance damage to the Mason City and Macomet Stop You to pay all necessary expense in connection with determining the deadweight on the above three vessels and the Maddequet when available Stop Condition resighting bottom to be as agreed upon, namely expense to be for your account unless damages are found which we elect not to repair or allow for.

EDWARD P. FARLEY,
Vice President, in Charge of Sales.

58 Copy.

P. Sinclair, Asst. to Financial Vice-Prest.

Washington, D. C., June 10, 1922.

W. A. Fletcher Company,
Hoboken, New Jersey:

Records show your concern indebted to Emergency Fleet Corporation amount nine thousand seven hundred twenty seven dollars seven cents stop Statement follows.

P. SINCLAIR.

RGD-McJ.

Comptroller's Department.

59 Copy.

W. F. Okeefe, Head Sales Section.

Washington, D. C., 11, June 10, 1922.

J. R. White,
Bethlehem Shipbuilding Corporation,
Bethlehem, Pa.:

Your offer sixth send your certified check for nineteen thousand one hundred thirty three dollars and ninety two cents stop Sales agreement now being drawn up here for your signature.

W. F. OKEEFE,
Emergency Fleet.

W. F. OKEEFE: EL.

Material Sales Division.

Surplus Property Department.

60 Copy

(Designation:) Traffic Manager

Washington, D. C., 10:00 a. m., June 10, 1922.

Tampa Interocean S.S. Company,
11 Broadway,
New York City, New York:

WEST IRA very difficult pass on this matter on basis meager information you submit stop

Have no details regarding freight contracts but assuming same are the usual form we cannot be held for breakdown in machinery as this is something beyond our control stop on above basis or at lease pending further advices must decline allowance in freight requested 92

KEENE,
Traffic Manager.

WNKh.

File Note: Before sending this telegram I got Mr. Snider's verbal views and he stated he believed we should decline the allowance on the information on hand.

61 Copy.

g-V.

Head Vessel Delivery Section.

Washington, D. C., at 9:05 a. m., June 10, 1922.
Govt. fast day.

Lone Star Steamship Company,
Galveston, Texas:

Advise expected date and port redelivery Lake Fairlie Four twenty eight.

GENDRON.

PAS:s.
E. F. C., Contract Division.

62 Copy.

J. L. Kennedy, District Comptroller, Portland.

Washington, D. C., 11:00 a. m., June 12, 1922.

Baird,
Emergency Fleet Corporation,
Portland, Oregon:

Review by construction Division standifer inventories indicates we have listed an excess of possible requirements of asbestos millboard flats and rounds, rope, pipe, and miscellaneous electric equipment stop We propose crediting standifer account with say twenty five perecnt of original cost of such excess instead of invoice cost stop Based on sales experience in your opinion is such an allowance equitable to both Fleet and contractor

KENNEDY.

Construction, General Comptroller's Department, 9.11-S.

63 Copy.

Advertising Manager.

Washington, D. C., June 12, 1922.

F. M. Wolf,
Munson Steamship Line,
67 Wall Street,
New York City:

Do you maintain record by names and addresses of inquiries made direct to your line from advertising stop If so please check your passengers lists since January first against such record to determine number of passengers resulting from such direct inquiries stop Report should show key number of advertisement if given in inquiry stop Please advise when this report will be received as in-

formation requested is necessary in determining next fiscal year advertising appropriation Hundred forty five.

JAMES W. BORING,
Advertising Manager.

JWB.
Operations, Advertising.

64 Copy.

Traffic Manager.

Washington, D. C., 10:00, June 12, 1922.

S. W. McLaren,
Morris and Company,
Chicago, Ill.:

Refer your wire claim Labette conference with Bolton and Blake stop Agreeable settling claim for three thousand dollars stop Instructing payment today seven forty five.

KEENE,
Emergency Fleet.

JFG/EH.
Emergency Fleet Corporation, Traffic.

65 Copy.

Traffic.

Washington, D. C., 3:30, June 12, 1922.

Coste,
National Coffee Roasters Association,
74 Wall street,
New York City:

Supplementing my four eighty three George Pierce unavoidably delayed Plate will arrive Santos about nineteenth load coffee four eighty eight.

KEENE,
Shipboard.

NGT. H.
Operations, traffic.

66 Copy.

H. P. Gardner, Mgr., Mortgage Sales.

Washington, D. C., 10:00 a. m., June 24, 1922.

Victor J. Humbrecht,
Stephen-Girard Building,
Philadelphia, Pa.:

Expect to close bids on Harriman Mortgages Monday morning stop To avoid further negotiations give me final and highest bid by nine Monday morning next.

GARDNER.

Mortgages sales—Finance.

67 Copy.

Washington, D. C., June 24, 1922.

C. S. Nye,
U. S. Shipping Board, E. F. C.,
Montreal, Canada:

Re suit just commenced Quebec District Montreal Superior Court stop Retain LaFleur MacDougall MacFarlane & Barclay to represent Fleet Corporation stop Further instructions by letter follow.

CHAUNCEY G. PARKER,
Chief Counsel, Emergency Fleet Corporation.

CHP:cb.
Construction, law.

68 Copy.

J. Harry Philbin, Mgr. Dept. of Ship Sales

Washington, D. C., 11.45 a. m., June 24th, 1922.

Garland Steamship Corporation,
511 Fifth Avenue, New York, N. Y.:

Retel. date. Understand you wish to dock only Eastern Imported stop Please deposit balance purchase price with Benn Barber together with evidence that appropriate insurance has been arranged stop Will then have Importer docked by Board expenses thus incurred to be paid by you stop Bills sale will be forwarded early next week.

PHILBIN,
Ship Sales.

JHP:M:M.
Construction, Ship Sales.

69 Copy.

Traffic.

Washington, D. C., 12 a. m., June 24, 1922.

Felix Coaste,
National Coffee Roasters Association,
74 Wall St.,
New York City:

Vessels loading next week Southern Cross due Santos June twenty seventy sails June twenty eighth arrives Rio sails June twenty ninth New York stop George Pierce Santos sails July first arrives Victoria July third sails fifth New Orleans four thirty-two.

KEENE.

JGT-C.
Operations, traffic.

70 Copy.

J. Harry Philbin, Mgr. Dept. of Ship Sales.

Washington, D. C., 12:30 p. m., June 30, 1922.

Pacific States Lumber Company,
San Francisco, Cal.:

Contract for purchase of S. S. Cottonwood from us calls for a cash payment of $50,000. This contract was executed March 24 1922 stop We requested Hough take steps for completion of same May 18, 1922, May 23, 1922 stop Advised by office of Edward S. Hough May 22 that there was no one at your place of business having authority to make decision and Hough in Europe stop As you may be interested we hereby notify you that payment not having been made in accordance with the terms of this contract by purchaser We regard same broken and shall proceed at once to protect our interests.

PHILBIN,
Ship Sales.

JHP:M:M.
Construction, Ship Sales.

71 Copy.

June 16, 1922.

From: Traffic Department.
To: Cable Section.

Kindly transmit the following cable to Manila:

"Understand new regulations Manila require a consignee present two negotiable and one non-negotiable copy bills of lading in order obtain delivery of cargo stop Funch Edye have taken initiative in notifying shippers these requirements stop We should be kept posted such important matters."

W. B. KEENE,
Traffic Manager.
By V. J. FREEZE,
Head Far East and Long Voyage Trades Division.

VJF/k.

72 Copy.

June 17, 1922.

From: W. B. Keene, Traffic Manager,
To: Telegraph and Cable Section.

Please transmit the following message to Mr. Love care London office (regular cable):

Standard Oil inquiring rate three hundred thousand cases Oil movement nineteen twenty three to Benang Port Swettenham Singa-

port stop Indications twenty-three cents stop Will not quote this far in advance this trade unless you think advisable.

W. B. KEENE,
Traffic Manager.

WHKb.

73 Copy.

June 24, 1922.

From: M. W. Bowen, Manager Fuel Department,
To: Cable Department, via Mr. Cowen.

Please transmit the following cable to Amshibo London:

My thirteen seventy four your thirteen naught eight continue until at least end Gueret Gait contract August thirty-first and longer if you consider price satisfactory to supply best available coal to Washington and America stop Advise us what you do.

M. W. BOWEN,
Manager Fuel Department.

74 Copy.

June 24, 1922.

From: M. W. Bowen, Manager Fuel Dept.,
To: Cable Dept. via Mr. Cowen.

Please transmit the following cable to Amshibo, London:

Your fourteen ninetyfour you authorized close with Lambert Brothers our requirements only Ceuta until December thirty-first nineteen twenty-two at price not exceeding sixty-seven and six per ton for installation provided they agree to fall clause which we think they should do in view of similar action by British Mexican stop Advise what to do.

W. M. BOWEN,
Manager Fuel Department.

MWB:MM.

75 Copy.

June 26, 1922.

From: W. B. Keene.
To: Telegraph and Cable Section.

Please transmit the following message to Mr. Love, care London Office (straight cable):

Fourteen seventy six.
Moloney refers competition Royal Mail Steam Packet Europe stop He believes rate suggested will encourage travel States connection stop over Rio Exposition stop Will also be necessary for us reduce rates between Argentine and Rio Santos to meet competition Royal Mail and new German steamers.

W. B. KEENE,
Traffic Manager.

WBKb.

76 *Plea.*

Filed January 23, 1925.

* * * * * * *

Now comes the defendant, the United States Shipping Board Emergency Fleet Corporation, and for its plea to the declaration says:

1. The defendant, the United States Shipping Board Emergency Fleet Corporation, admits and avers that the plaintiff is a Corporation duly organized and existing under the laws of the State of New York, and that the said defendant is a Corporation of the District of Columbia.

The defendant admits and avers that at the times set forth in the declaration, and for a long time prior thereto, the plaintiff was engaged in the business of transmitting messages by telegraph in, to and from the District of Columbia, the several States of the United States and elsewhere, and that the plaintiff charged for transmitting messages by telegraph, fixed sums of money or tariffs established and made the legal and uniform rates in conformity with the Act of Congress known as the Interstate Commerce Act and amendments thereto, and that the usual and legal rates applicable to such messages were dependent upon the points of origin and destination of such messages, the number of words therein contained and the class of service.

The defendant avers that the charges, fixed sums, tariffs and legal and uniform rates admitted and averred in the paragraph immediately preceding this paragraph have reference both by the plaintiff and the defendant herein to only the legal commercial rates of the plaintiff.

The defendant admits and avers that it requested the plaintiff to perform services in transmitting and delivering messages, but
77 only as hereinbefore averred, and agreed to pay to the plaintiff the legal charges therefor at the end of each and every calendar month in respect to message-service performed during the month, and that upon said request and agreement the plaintiff performed such services for the defendant; and that such services extended through the months of June, 1922, and July, 1922.

The defendant avers that the established legal rates referred to in the immediately foregoing paragraph were not the legal commercial rates of the plaintiff but were forty (40) per centum therefor, namely, the legal Government rates applicable to the defendant as hereinafter averred.

The defendant admits and avers that the plaintiff has demanded of it, the defendant, One Thousand Nine Hundred Thirty-one Dollars and Four Cents ($1,931.04) for telegraphic service rendered by the plaintiff to the defendant during the month of June, 1922, and the further sum of Five Hundred and Five Dollars and Ninety-five Cents ($505.95) for telegraphic service rendered by the plaintiff to the defendant during the month of July, 1922.

The defendant avers that the two sums named in the immediately foregoing paragraph represent the legal commercial rates of the plaintiff (that is, two and one-half ($2\frac{1}{2}$) times the legal Government rates in the premises) and further avers that such legal commercial rates at no time applied or could be legally applied to messages transmitted or delivered at the instance of the defendant.

The defendant avers that it tendered to the plaintiff, on rendition of bills by the defendant to the plaintiff, the sum of Seven Hundred and Seventy-two Dollars and Forty-two Cents ($772.42) for
78 the said telegraphic service rendered by the plaintiff to the defendant during the month of June, 1922, and the sum of Two Hundred and Two Dollars and Thirty-eight cents ($202.38) for the said telegraphic service rendered during the month of July, 1922, but that said tenders were by the plaintiff refused, although the said tenders were forty (40) per centum of the legal commercial rate, the said per centum being the legal Government rate.

The defendant avers that the statement in the declaration that the messages therein referred to were transmitted and delivered by the Telegraph Company for and at the request of the Fleet Corporation is true in fact, and the computation of the amount of charge which is or would be due therefor at the commercial rate is correct, except that the enumeration of messages set forth in the particulars of demand annexed to the declaration herein and the charges in respect to said messages are subject to these corrections, that certain items therein should be charged against others than the Fleet Corporation, and certain other items are duplicate charges, and therefore there should be eliminated from the June, 1922, domestic bill, charges totaling the sum of $4.67, and from the July, 1922, domestic bill, charges totaling $3.02.

The defendant avers that the charges at the Government rate upon the messages set forth in the said particulars of demand, after making the eliminations last referred to, are as follows: for the month of June, 1922, domestic, $636.15; June, 1922, cable $180.87; July, 1922, domestic, $204.69.

The defendant avers that since the filing of the declaration
79 herein, and on or about January 25, 1923, the Fleet Corporation has paid to the Telegraph Company the charges aforesaid at the Government rate, without prejudice to the contentions of either party hereto.

The defendant avers that its said tenders as set forth in the immediately preceding paragraph to the plaintiff were based upon and in conformity with the legal Government rates as established by the Postmaster General of the United States on July 1st, 1921, and July 1st, 1922, by authority in him vested by an Act of Congress approved July 24, 1866 entitled "An Act to aid in the construction of telegraphic lines and to secure to the Government the use of the same for postal, military and other purposes," which Government rates are, and at the times herein pertinent were, by the Act applicable to telegraphic communications sent or received by this defendant in the matters set forth in the declaration.

That Section 4 of the aforesaid Act of Congress reads as follows:

"That before any telegraph company shall exercise any of the powers or privileges conferred by this Act, such company shall file their written acceptance with the Postmaster General of the restrictions and obligations required by this Act,"

and in compliance with the terms of this section, the Board of Directors of the plaintiff company on June 5, 1867 duly adopted a resolution accepting the provisions of the Act with all the powers, privileges, restrictions and obligations conferred and required thereby, and on June 8, 1867, pursuant to the resolution, filed with the Postmaster General its written acceptance of the provisions of the Act and of the restrictions and obligations imposed and required thereby.

86 The defendant avers that all its funds and moneys are, and at all times herein pertinent were, appropriated to it by the Congress of the United States from the Treasury of the United States and that all funds and moneys by the defendant at any time received are, and at all times have been appropriated by law to be disbursed and used by this defendant as the corporate agency and instrumentality of the United States for the sole purpose of the United States, and in their interest, and that the defendant at no time has had any assets whatsoever other than those derived from the appropriations aforesaid.

The defendant avers that the United States Shipping Board was established by an Act of Congress, approved September 7, 1916, entitled,

"An Act to establish a United States Shipping Board for the purpose of encouraging, developing, and creating a naval auxiliary and naval reserve and a merchant marine to meet the requirements of the commerce of the United States with its Territories and possessions and with foreign coutries; to regulate carriers by water engaged in the foreign and interstate commerce of the United States; and for other purposes."

By the terms of Section 11 of the said Act there was vested in the said Shipping Board the power, if in its judgment such action was necessary to carry out the purposes of the Act, to form under the laws of the District of Columbia, one or more corporations for the purchase, construction, equipment, lease, charter, maintenance and operation of merchant vessels in the commerce of the United States. The said Section further provided that the total capital stock of any corporation or corporations formed pursuant to the power conferred thereby should not exceed $50,000,000.00, and the said Shipping Board was authorized thereby, for and on behalf of the United
81 States, to subscribe to, purchase and vote not less than a majority of the capital stock of any such corporation, and to do all other things in regard thereto necessary to protect the interests of the United States and to carry out the purposes of the said Act.

Acting pursuant to the authority conferred upon it by the said Section of the aforesaid Act, the said Shipping Board, concluding that the formation of a corporation was necessary to carry out the purposes of the Act, caused this defendant to be incorporated on the 16th day of April, 1917, under the laws of the District of Columbia with an authorized capital stock of $50,000,000.00, and, in behalf of the United States, subscribed to and purchased all of said capital stock, which was paid for by the United States, and ever since the formation of said corporation the said Shipping Board, through its designated representatives, has voted the said stock at all meetings of the stockholders thereof. That thereafter by resolutions duly adopted by the said Shipping Board, pursuant to authority vested in it by the said Act of Congress and the amendments thereto, and by the Merchant Marine Act, approved June 5, 1920, the said Shipping Board duly constituted the defendant its instrumentality and the instrumentality of the United States with full power to act for the United States in all and singular the matters referred to in and covered by the telegraphic messages averred in the declaration herein and set out in the particulars of demand annexed thereto.

The defendant avers that it is and at all times herein pertinent has been, by law and by executive orders of the President of the United States, and by the aforesaid resolutions of the Shipping Board, acting solely as the agent and instrumentality of the United
82 States Shipping Board and of the United States and in no other capacity whatever, and that all the aforesaid telegraphic messages were transmitted and received in pursuit of such authority and exclusively in the course of its employment as such agent and instrumentality, of all of which the plaintiff at all times had full knowledge and notice.

The defendant avers that the plaintiff, the Western Union Telegraph Company, did accept from and transmit at the instance of the defendant and its officers and agents throughout the period pertinent to this cause and long anterior thereto, that is, continuously from the time of its creation, telegrams on a form captioned "Official Telegram—Government Rate," which caption bore the name of the plaintiff, to wit, "Western Union," and the name of the defendant, to wit, "United States Shipping Board Emergency Fleet Corporation," in contradistinction to the commercial-rate form, which bore the caption "Western Union Telegram," the plaintiff accepting the said forms and transmitting said telegrams at Government rates for several years, to wit, continuously and without objection or protest until the present issue arose in June, 1922.

The defendant avers that the United States Shipping Board since its creation has been and still is an independent department of the Government of the United States, and that the plaintiff has for many years and without objection afforded the said Board, as well as each and every other independent department of the Government, the Government rates hereinbefore averred for the transmission of messages.

The defendant avers that all its acts including the transmission of the telegraphic messages referred to in the declaration and

83 set out in the particulars of demand annexed thereto were done and performed by it solely as the corporate agency and instrumentality of the Government and in the exercise by it of the sovereign powers of the Government, duly delegated to it as aforesaid.

2. The defendant, for a further plea, reaffirms and incorporates by reference as fully as if here repeated, all its admissions and averments contained in its foregoing first plea so far as they may be applicable to the averments contained in the second count of the plaintiff's declaration in this case.

The defendant avers that it tendered to the plaintiff, on rendition of bills by the defendant to the plaintiff, the sum of Nine Hundred Seventy-four Dollars and Eighty Cents ($974.80) (being $772.42 plus $202.38) in full discharge of the claims averred in paragraph 2 of the declaration, that is, in the second count thereof, but that said tenders were refused by the plaintiff.

The defendant avers that the statement in the declaration that the messages therein referred to were transmitted and delivered by the Telegraph Company for and at the request of the Fleet Corporation is true in fact, and the computation of the amount of charge which is or would be due therefor at the commercial rate is correct, except that the enumeration of messages set forth in the particulars of demand annexed to the declaration herein and the charges in respect to said messages are subject to these corrections, that certain items therein should be charged against others than the Fleet Corporation, and certain other items are duplicate charges, and therefore there should be eliminated from the June, 1922, domestic bill, charges totaling the sum of $4.67, and from the July, 1922, domestic
84 bill, charges totaling $3.02.

The defendant avers that the charges at the Government rate upon the messages set forth in the said particulars of demand, after making the eliminations last referred to, are as follows: for the month of June, 1922, domestic, $636.15; June, 1922, cable $180.87; July, 1922, domestic $204.69.

The defendant avers that since the filing of the declaration herein, and on or about January 25, 1923, the Fleet Corporation has paid to the Telegraph Company the charges aforesaid at the Government rate, without prejudice to the contentions of either party hereto.

The defendant avers that the sums so tendered to but refused by the plaintiff were the equivalent of the legal Government rates for the claims in the said second count, whereas the amounts therein set forth by the plaintiff represent the legal commercial rates for the said claims, (that is, two and one-half ($2\frac{1}{2}$) times the legal Government rate), and further avers that such legal commercial rates at no time applied to messages transmitted or delivered at the instance of the defendant.

The defendant avers that its said tenders to the plaintiff were based upon and in conformity with the legal Government rates established by the Postmaster General of the United States on July 1st, 1921, and July 1st, 1922, by authority in him vested by the aforesaid Act

of Congress approved July 24th, 1866, which legal Government rates are, and at the times herein pertinent were, by virtue of that Act, applicable to telegraphic communications sent or received by this defendant in the premises.

85 That Section 4 of the aforesaid Act of Congress reads as follows:

"That before any telegraph company shall exercise any of the powers or privileges conferred by this Act, such company shall file their written acceptance with the Postmaster General of the restrictions and obligations required by this Act."

In compliance with the terms of this section, the Board of Directors of the plaintiff company on June 5, 1867, adopted a resolution accepting the provisions of the Act with all the powers, privileges, restrictions and obligations conferred and required thereby, and on June 8th, 1867, pursuant to the resolution, filed with the Postmaster General its written acceptance of the provisions of the Act and of the restrictions and obligations imposed and required thereby.

The defendant avers that all its funds and moneys are, and at all times herein pertinent were appropriated to it by the Congress of the United States from the Treasury of the United States, and that all funds and moneys by the defendant at any time received are, and at all times have been appropriated by law to be disbursed and used by this defendant as the corporate agency and instrumentality of the United States for the sole purposes of the United States, and in their interest and that the defendant at no time has had any assets whatsoever other than those derived from the appropriations aforesaid.

The defendant avers that the United States Shipping Board was established by an Act of Congress, approved September 7, 1916, entitled,

"An Act to establish a United States Shipping Board for the purpose of encouraging, developing and creating a naval auxiliary and naval reserve and a merchant marine to meet the re-

86 quirements of the commerce of the United States with its Territories and possessions and with foreign countries; to regulate carriers by water engaged in the foreign and interstate commerce of the United States; and for other purposes."

By the terms of Section 11 of the said Act there was vested in the said Shipping Board the power, if in its judgment such action was necessary to carry out the purposes of the Act, to form under the laws of the District of Columbia, one or more corporations for the purchase, construction, equipment, lease, charter, maintenance and operation of merchant vessels in the commerce of the United States. The said Section further provided that the total capital stock of any corporation or corporations formed pursuant to the power conferred thereby should not exceed $50,000,000.00, and the said Shipping Board was authorized thereby, for and on behalf of the United States, to subscribe to, purchase and vote not less than

a majority of the capital stock of any such corporation, and to do all other things in regard thereto necessary to protect the interests of the United States and to carry out the purposes of the said Act. Acting pursuant to the authority conferred upon it by the said Section of the aforesaid Act, the said Shipping Board, concluding that the formation of a corporation was necessary to carry out the purposes of the Act, caused this defendant to be incorporated on the 16th day of April, 1917 under the laws of the District of Columbia with an authorized capital stock of $50,000,000.00, and, in behalf of the United States, subscribed to and purchased all of said capital stock, which was paid for by the United States, and ever since the formation of said corporation the said Shipping Board, through its designated representatives, has voted the said stock at all meetings of the stockholders thereof. That thereafter by resolutions
87 duly adopted by the said Shipping Board, pursuant to authority vested in it by the said Act of Congress and the amendments thereto, and by the Merchant Marine Act, approved June 5, 1920, the said Shipping Board duly constituted the defendant its instrumentality and the instrumentality of the United States with full power to act for the United States in all and singular the matters referred to in and covered by the telegraphic messages averred in the declaration herein and set out in the particulars of demand annexed thereto.

The defendant avers that it is and at all times herein pertinent has been by law and by executive orders of the President of the United States and by the aforesaid resolution of the Shipping Board, acting solely as the instrumentality of the United States Shipping Board and of the United States and in no other capacity whatever, and that all the aforesaid telegraphic messages were transmitted and received in pursuit of such authority and exclusively in the course of its employment as such agent and instrumentality, of all of which the plaintiff at all times had full knowledge and notice.

The defendant avers that the plaintiff, the Western Union Telegraph Company, did accept from and transmit at the instance of the defendant throughout the period pertinent to this cause and long anterior thereto, that is, continuously from the time of its creation, telegrams on a form captioned "Official Telegram—Government Rate", which caption bore the name of the plaintiff, to wit "Western Union", and the name of the defendant, to wit, "United States Shipping Board Emergency Fleet Corporation," in contra-
88 distinction to the commercial-rate form, which bore the caption "Western Union Telegram", the plaintiff accepting said forms and transmitting said telegrams at Government rates for several years, to wit, continuously and without objection, or protest, until the present issue arose in June, 1922.

The defendant avers that the United States Shipping Board is and has been continuously since its creation an independent department of the Government of the United States and that the plaintiff has for many years and without objection afforded the said Board, as well as each and every other independent department of the Government, the Government rates hereinbefore averred for the transmission of messages.

The defendant avers that all its acts including the telegraphic messages referred to in the declaration and set out in the particulars of demand annexed thereto were done and performed by it solely as the corporate agency and instrumentality of the Government and in the exercise by it of the sovereign powers of the Government, duly delegated to it as aforesaid.

The defendant avers that the statement in the declaration that the messages therein referred to were transmitted and delivered by the Telegraph Company for and at the request of the Fleet Corporation is true in fact, and the computation of the amount of charge which is or would be due therefor at the commercial rate is correct, except that the enumeration of messages set forth in the particulars of demand annexed to the declaration herein and the charges in respect to said messages are subject to these corrections, that certain items therein should be charged against others than the Fleet Corporation, and certain other items are duplicate charges, and there-
89 fore there should be eliminated from the June, 1922, domestic bill, charges totaling the sum of $4.67, and from the July, 1922, domestic bill, charges totaling $3.02.

The defendant avers that the charges at the Government rate upon the messages set forth in the said particulars of demand, after making the eliminations last referred to, are as follows: for the month of June, 1922, domestic, $636.15; June, 1922, cable $180.87; July, 1922, domestic, $204.69.

The defendant avers that since the filing of the declaration herein, and on or about January 25, 1923, the Fleet Corporation has paid to the Telegraph Company the charges aforesaid at the Government rate, without prejudice to the contentions of either party hereto.

The defendant admits and avers that the items set forth in the particulars of demand annexed to the declaration are correct, as above rectified, with the exception that each item states the legal commercial rate instead of stating, as this defendant avers it should state, the legal Government rate, which legal Government rate is, and at the herein pertinent times was forty (40) per centum of each respective amount in the said particulars of demand.

CHAUNCEY G. PARKER,
E. M. ALLISON, Jr.,
E. M. ALLISON, Jr.,
GEOFFREY GOLDSMITH,
GEOFFREY GOLDSMITH,
Attorneys for the U. S. S. B. E. F. C.

January 10, 1923.

(Endorsed:) File. Wendell P. Stafford, Justice.

90 *Joinder in Issue.*

Filed January 23, 1923.

* * * * * * *

Comes now the plaintiff by its attorney and joins issue upon the defendant's pleas herein.

PAUL E. LESH,
Attorney for Plaintiff.

(Endorsed:) File. Wendell P. Stafford, Justice.

Stipulation Waiving Jury.

Filed January 23, 1925.

* * * * * * *

We, the attorneys for the respective parties, hereby waive the trial to the jury of this cause, and hereby agree to submit the same to the court, to be tried and determined without the intervention of a jury.

PAUL E. LESH,
Attorney for the Plaintiff.
E. M. ALLISON, Jr.,
Special Counsel;
GEOFFREY GOLDSMITH,
Assistant Counsel,
Attorneys for the Defendant.

91 Supreme Court of the District of Columbia.

Monday, March 16th, 1925.

Session resumed pursuant to adjournment, present presiding Mr. Justice Stafford.

* * * * * * *

Comes now the plaintiff herein by its attorney of record in open Court and moves for judgment, and said motion be and is hereby granted by the Court. Wherefore it is considered that plaintiff recover of defendant the sum of fourteen Hundred and Seven Dollars and Fifty Nine Cents ($1,407.59) with interest on Eleven Hundred ($1,100) Dollars and Thirty Five Cents from the 1st day of July, 1922, and on Two Hundred and Ninety Eight Dollars and Twenty Four Cents from the 1st day of August, 1922, together with his costs of suit to be taxed by the Clerk and have execution thereof. From the foregoing judgment the defendant notes an appeal in open Court to the Court of Appeals. Whereupon the maximum of an undertaking for costs is hereby fixed in the sum of One Hundred Dollars, with leave to deposit the sum of Fifty Dollars with the Clerk in lieu thereof.

Tuesday, March 31st, 1925.

Session resumed pursuant to adjournment, present presiding Mr. Justice Stafford.

* * * * * * *

The Court this day having signed the Bill of Exceptions taken at the trial of this cause now hereby orders the same made of record.

92 *Assignments of Error.*

Filed March 31, 1925.

* * * * * * *

Comes now the defendant in the above entitled cause and assigns the following errors committed by the Court on the trial thereof, and upon which the defendant will rely for a reversal of the judgment appealed from:

1. The Court erred in denying the motion of the defendant to render and enter judgment in its favor.
2. The Court erred in making its finding and decision numbered 1.
3. The Court erred in making its finding and decision numbered 2.
4. The Court erred in making its finding and decision Numbered 3.
5. The Court erred in granting the motion of the plaintiff to render and enter judgment for the plaintiff for the amounts stated in the bill of exceptions herein or for any amount.
6. The Court erred in rendering and entering judgment for the plaintiff for the amounts named therein or for any amount.

E. M. ALLISON, Jr.,
GEOFFREY GOLDSMITH.
Attorneys for Defendant.

Dated March 31st, 1925.

Memorandum.

April 2, 1925.—$50 deposited in lieu of undertaking on appeal.

93 *Designation of Record.*

Filed March 31, 1925.

* * * * * * *

The Clerk of the Court will please prepare a transcript of record on appeal in the above entitled cause containing the following:

1. The declaration (from which omit all excepting first two and last pages of "Particulars of Demand").
2. The pleas.
3. Joinder in Issue.
4. The stipulation waiving jury.
5. The Judgment.
6. The notation of appeal.
7. The notation of deposit in lieu of appeal undertaking.
8. The agreed statement of facts.
9. Memorandum of settlement of the bill of exceptions.

10. The assignments of error.
11. This designation.

E. M. ALLISON, JR.,
GEOFFREY GOLDSMITH,
Attorneys for Defendant.

Dated March 31st, 1925.

Approved March 31st, 1925.

PAUL E. LESH,
Attorney for Plaintiff.

94 Supreme Court of the District of Columbia.

UNITED STATES OF AMERICA,
District of Columbia, ss:

I, Morgan H. Beach, Clerk of the Supreme Court of the District of Columbia, hereby certify the foregoing pages numbered from 1 to 93, both inclusive, to be a true and correct transcript of the record, according to directions of counsel herein filed, copy of which is made part of this transcript, in cause No. 67088 at Law, wherein The Western Union Telegraph Company is Plaintiff and The United States Shipping Board Emergency Fleet Corporation is Defendant, as the same remains upon the files and of record in said Court.

In testimony whereof, I hereunto subscribe my name and affix the seal of said Court, at the City of Washington, in said District, this 10th day of April, 1925.

[Seal of Supreme Court of the District of Columbia.]

MORGAN H. BEACH,
Clerk.

LMG.

95 In the Supreme Court of the District of Columbia.

At Law.

No. 67088.

THE WESTERN UNION TELEGRAPH COMPANY, Plaintiff,

vs.

THE UNITED STATES SHIPPING BOARD EMERGENCY FLEET CORPORATION, Defendant.

Bill of Exceptions.

Be it remembered that on the twenty-third day of January, A. D. 1925, this cause came on for trial upon the issues joined herein, in this Court, the honorable Wendell P. Stafford, justice, presiding, and was tried and determined by the Court without the intervention

of a jury; the parties by their attorneys of record having filed with the Clerk a stipulation in writing waiving a jury. Upon the trial thereof the following proceedings were had:

The case was tried upon an agreed statement of facts theretofore filed and appearing elsewhere in the record herein. There was no evidence offered. The Court found the facts to be in accord with said agreed statement.

Thereupon, the defendant, by its counsel, moved the Court, upon the facts so agreed upon and found, to render and enter judgment for the defendant, which motion was by the Court denied, to which ruling of the Court counsel for the defendant then and there excepted, which exception was by the Court duly allowed.

In ruling upon defendant's motion for judgment and, contrary to the defendant's contentions in support thereof, the Court decided and found

1. That the defendant was not during any of the period of
96 time mentioned in the declaration herein and is not a department of the Government of the United States within the meaning of Section 2 of the Act of Congress approved July 24, 1866, Chapter CCXXX, 39th Congress, Sess. 1, as amended, Revised Statutes, Sec. 5266.

2. That for the services rendered by the plaintiff in transmitting over its telegraph lines for the defendant the telegraphic messages here involved, the defendant is obligated to pay the usual commercial rates and is not entitled to the benefit of the reduced rates fixed by the Postmaster General pursuant to said Act.

3. That the rates applicable to the telegraphic service rendered to the defendant by the plaintiff for which claim is made herein, are established and fixed by law, and no agreement, custom or course of dealing exists having the effect of varying the rates applicable to the messages of the defendant corporation.

To each of the foregoing findings, numbered 1, 2, and 3, counsel for the defendant then and there separately excepted, which exceptions were by the Court duly allowed.

Thereupon the plaintiff, by its counsel, moved the Court to render and enter judgment for the plaintiff and against the defendant in the sum of $1,407.59, with interest on $1,109.35 from July 1st, 1922 until paid, and on $298.24 from August 1st, 1922 until paid, which motion was by the Court granted, and to the action of the Court in granting the same, counsel for the defendant then and there excepted, which exception was by the Court duly allowed.

Thereupon, and on the 16th day of March, A. D. 1925, judgment was accordingly rendered and entered, as appears elsewhere in the record herein, to the rendition and entry of which judgment counsel for the defendant then and there excepted, which exception was by the Court duly allowed.

And thereupon, and as all of said exceptions were duly
97 noted and allowed as aforesaid and duly entered upon the minutes of the court, and because the matters and things hereinbefore recited are not matters of record, and in order to make the

same a part of the record herein, which is hereby ordered, so that the defendant may have its case reviewed on appeal, the defendant by its attorneys moves the court to allow, sign and seal this its bill of exceptions, to have the same force and effect as if each and every one of said exceptions had been separately signed and sealed, which motion is granted by the court; and thereupon the defendant tenders this, its bill of exceptions, and prays the court to allow, sign and seal the same, which is accordingly done, now for then, this 31st day of March, 1925.

Given under the hand and seal of the justice of said court, before whom said proceedings were had, this 31st day of March, A. D. 1925.

WENDELL P. STAFFORD, [SEAL.]
Justice.

Settlement of bill of exceptions in foregoing form is consented to by

PAUL E. LESH,
Attorney for Plaintiff.
E. M. ALLISON, JR.,
GEOFFREY GOLDSMITH,
Attorney for Defendant.

98 [Endorsed:] In the Supreme Court of the District of Columbia. Western Union Telegraph Company vs. United States Shipping Board Emergency Fleet Corporation. At Law. No. 67088. M. 75 P. 293. Bill of Exceptions. Filed —— —, 1925. —— ——, Clerk, by —— ——, Deputy Clerk. Paul E. Lesh, Attorney for Plaintiff. E. M. Allison, Jr., Geoffrey Goldsmith, Attorneys for Defendant.

Endorsed on cover: District of Columbia Supreme Court. No. 4322. The United States Shipping Board Emergency Fleet Corporation, appellant, vs. The Western Union Telegraph Company. Court of Appeals, District of Columbia. Filed Apr. 18, 1925. Henry W. Hodges, clerk.

(6149)

Tuesday, February 9th, A. D. 1926

No. 4322

THE UNITED STATES SHIPPING BOARD EMERGENCY FLEET CORPORATION, Appellant,

vs.

THE WESTERN UNION TELEGRAPH COMPANY

The argument in the above entitled cause was commenced by Mr. E. M. Allison, jr., attorney for the appellant, and was continued by Mr. Paul E. Lesh, attorney for the appellee, and was concluded by Mr. E. M. Allison, jr., attorney for the appellant.

In the Court of Appeals of the District of Columbia

No. 4322

THE UNITED STATES SHIPPING BOARD EMERGENCY FLEET CORPORATION, Appellant,

vs.

THE WESTERN UNION TELEGRAPH COMPANY, Appellee

OPINION

Before MARTIN, Chief Justice; ROBB and VAN ORSDEL, Associate Justices

VAN ORSDEL, *Associate Justice:* The Western Union Telegraph Company, plaintiff below, sued the United States Shipping Board Emergency Fleet Corporation for the sum of $1,407.59 with interest, being the unpaid difference between the Government rate and the Commercial rate on messages transmitted by the Telegraph Company for the Fleet Corporation during the months of June and July, 1922.

From a judgment in favor of the plaintiff, the defendant Shipping Board has appealed.

The case turns upon the construction of section 5266, Rev. Stat. U. S., as follows: "Telegrams between the several Departments of the Government and their officers and agents, in their trans-

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mission over the lines of any telegraph company to which has been given the right of way, timber, or station lands from the public domain shall have priority over all other business, at such rates as the Postmaster-General shall annually fix. And no part of any appropriation for the several Departments of the Government shall be paid to any company which neglects or refuses to transmit such telegrams in accordance with the provisions of this section."

There is no controversy as to the service having been rendered and paid for by the Shipping Board at the Government rate. This suit is to recover the difference between the Government rate and the Commercial rate; hence the issue narrows itself to whether or not the Shipping Board is such an agency of a Department of the Government as will bring it within the provisions of the above statute. From an agreement entered into between the Shipping Board and the Telegraph Company, the present case seems to be a test one. It was stipulated, among other things, "that both parties will expedite to a final determination by the Supreme Court of the United States a proposed suit (the present suit) by the Telegraph Company to be brought in the Supreme Court of the District of Columbia against the Fleet Corporation, claiming compensation at the Commercial rate for transmitting certain messages from and to the Fleet Corporation, billed at Washington during the months of June and July, 1922."

It was also stipulated that pending the present suit, the Telegraph Company should render its bills showing the amount charged at the Commercial rate and also the amount charged at the prevailing Government rate; that the Fleet Corporation should promptly audit the bills, both at Commercial and Government rates, and when found correct pay the same at the Government rate, that pending the final determination of this suit, the payment of the bills at the Government rate and the receipt thereof by the Telegraph Company shall be without prejudice to the claim of the Telegraph Company for the balances which would be due it at the Commercial rate.

The Fleet Corporation was incorporated by the United States Shipping Board under the provisions of the Act of Congress of September 7, 1916, 39 Stats. 728, with a capital stock of $50,000,000, of which the Board, on behalf of the United States, might subscribe to and vote not less than a majority of the stock. All of the stock was thus subscribed by the Shipping Board. The act further provided that "The Board, with the approval of the President, may sell any or all of the stock of the United States in such corporation, but at no time shall it be a minority stockholder therein."

The object of the corporation, as stated in its certificate, is "the purchase, construction, equipment, lease, charter, maintenance, and operation of merchant vessels in the commerce of the United States, and in general to do and to perform every lawful act and thing

necessary or expedient to be done or performed for the efficient and profitable conducting of said business as authorized by the laws of Congress, and to have and to exercise all the powers conferred by the laws of the District of Columbia upon corporations under said subchapter four (4), of the incorporation laws of the District of Columbia."

Following the declaration of War, Congress passed the Act of June 15, 1917, 40 Stat. 182, granting the President sweeping control over the expenditure of the "Emergency Shipping Fund." Among other things, the Act provided: "That all money turned over to the United States Shipping Board Emergency Fleet Corporation may be expended as other moneys of said corporation are now expended. All ships constructed, purchased, or requisitioned under authority herein, or heretofore or hereafter acquired by the United States, shall be managed, operated, and disposed of as the President may direct."

The fact that following the passage of this Act the Fleet Corporation was used by the President to assist him in carrying out certain of the war powers imposed upon him by Congress, in no way changed it from the status of a private corporation, or relieved it from its obligations as such. In United States vs. Strang, 254 U. S. 491, the court, answering the contention that the Fleet Corporation is a mere agency or instrumentality of the United States for executing certain limited Governmental powers delegated to it by the President, and, therefore, not liable to suit, said: "The Corporation was controlled and managed by its own officers, and appointed its own servants or agents, who became directly responsible to it. Notwithstanding all its stock was owned by the United States, it must be regarded as a separate entity. Its inspectors were not appointed by the President nor by any officer designated by Congress. They were subject to removal by the Corporation only, and could contract only for it. In such circumstances we think they were not agents of the United States."

The liability of the Fleet Corporation to suit on contracts made through its agents and representatives has been up-held in many cases; notwithstanding the ownership of its stock by the Government and its peculiar relation to the Government, growing out of the War emergency, where it was used by authority of Congress as an agency of the President. Krichman vs. United States, 256 U. S. 363; Sloan Ship Yards Corporation vs. United States Shipping Board Emergency Fleet Corporation, 258 U. S. 549; Astoria Marine Iron Works vs. Fleet Corporation, 258 U. S. 549; Eichberg vs. Fleet Corporation, 51 App. D. C. 44; 273 Fed. 886.

In Commercial Pacific Cable Company *vs.* Philippine National Bank, 263 Fed. 218, the court had under consideration the liability of the Philippine National Bank to pay commercial rates on telegrams sent by the Bank and its officers and agents through the Bureau of Insular Affairs of the United States Government as an intermediary at government rates, with the statutory precedent as

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to transmission. Under the statute providing for the creation of the Bank, the Philippine Government was required to at all times own at least 51% of the stock of the Bank. At the time the suit was brought, it owned 85% of outstanding stock. The voting power of the stock was fixed in a committee consisting of the Governor-General, who is appointed by the President of the United States, the President of the Philippine Senate, and the Speaker of the Philippine House. The affairs of the Bank are managed by the Board of Trustees consisting of a President, Vice-President, and five elective members. The President and Vice-President are appointed by the Governor-General with the advice and consent of the Philippine Senate. The remaining five directors are elected in accordance with the general corporation law. The Attorney-General of the Philippines is attorney for the Bank; and the Auditor, appointed by the President, is ex officio auditor of the Bank. Power is lodged in the Governor-General, with the consent of the Senate, to remove certain officers of the Bank. Indeed, the Bank was organized as a Government agency to build up and advance the wealth of the Islands.

Judge Mayer, in his decision, reached the following conclusion: "In view of the foregoing and other provisions, it is argued that the interest of the United States is so inextricably mingled with the purposes and administration of the bank and the welfare of the Islands and their Government that the bank in effect is a Department or agent of the Government of the United States. But although in the complex problems attendant upon the administration of the Philippine Government, in the interest of its welfare and that of the United States, the bank has, of course, many close relations with the United States Government, nevertheless there may be private ownership to the extent of 49 per cent of the stock of the bank, and it is permitted to do and does do a commercial business for profit, like any other bank. A financial institution so constituted cannot be a 'Department' of the United States Government, or an 'agent' in the sense of section 5266 of the Post Road Act, supra."

This case is closely analogous to the one at bar. There, as here, the corporation was acting in many respects as an agency of a Department of the Government of the United States, but it was treated as a private corporation, and therefore not such a departmental agency as could avail itself of the provisions of the statute granting Government rates on telegrams. The underlying principle in the present case, as in the cases above cited, holding the Shipping Board liable to suit as a private corporation, was announced by Chief Justice Marshall in Bank of the United States *vs.* Planters Bank of Georgia, 9 Wheat. 904, as follows: "It is, we think, a sound principle, that when a Government becomes a partner in any trading company, it divests itself, so far as concerns the transactions of that company, of its sovereign character, and takes that of a private citizen. Instead of communicating to the company its privileges and

prerogatives, it descends to a level with those with whom it associates itself, and takes the character which belongs to its associates, and to the business which is to be transacted. Thus, many states of this Union, who have an interest in banks, are not suable even in their own courts; yet they never exempt the corporation from being sued. The State of Georgia, by giving to the bank the capacity to sue and be sued, voluntarily strips itself of its sovereign character, so far as respects the transactions of the bank, and waives all the privileges of that character. As a member of a corporation, a government never exercises its sovereignty. It acts merely as a corporator, and exercises no other power in the management of the affairs of the corporation, than are expressly given by the incorporating Act."

It has been a settled principle of law in this country that where a state or the general Government descends from the plane of sovereignty and associates itself in a corporate capacity with private persons, it becomes in the eyes of the law a private person itself and is bound accordingly. Hall *vs.* Wisconsin, 103 U. S. 5; South Carolina *vs.* United States, 199 U. S. 437. In other words the mere fact that the United States owns stock in a corporation, does not vest the corporation with rights belonging to the Government in its sovereign capacity.

The Fleet Corporation is a distinct corporate entity through which the President acted in carrying out the war powers authorized by the Act of June 15, 1917, authorizing the President, among other things, "to modify, suspend, cancel, or requisition any existing or future contract for the building, production, or purchase of ships or material." It also made provision for compensation in the event a contract was cancelled by the President or through any agency of the Government selected by the President for that purpose. It has been held, in the cases adjudging the Fleet Corporation to possess the functions of a mere private corporation, that the authority conferred upon the President to cancel contracts or authorize the cancellation through the Fleet Corporation in no way affects the liability of the Corporation to suit on its contracts in the courts.

While the service obtained from the Telegraph Company may in part have been employed in relation to Government business, it was the separate contractual obligation of the Corporation, totally independent of any direct authority derived from the President. It logically follows that no contract is here involved with which the President, in carrying out the provisions of the Act of 1917, was in any way concerned. The service was performed for the Corporation, and the mere fact that some of it may have been rendered in connection with Government business in no way effected the corporate status of the Fleet Corporation or converted it into either a Department of the Government of the United States or an agent or officer of a Department, within the purview of section 5266, Rev. Stat., supra.

The judgment is affirmed with costs.

Tuesday, June 1st, A. D. 1926

No. 4322, April Term 1926

THE UNITED STATES SHIPPING BOARD EMERGENCY FLEET CORPORATION, Appellant,

vs.

THE WESTERN UNION TELEGRAPH COMPANY

Appeal from the Supreme Court of the District of Columbia. This cause came on to be heard on the transcript of the record from the Supreme Court of the District of Columbia, and was argued by counsel. On consideration whereof, it is now here ordered and adjudged by this Court that the judgment of the said Supreme Court in this cause be, and the same is hereby, affirmed with costs.

per Mr. Justice VAN ORSDEL,
June 1, 1926.

COURT OF APPEALS OF THE DISTRICT OF COLUMBIA

I, HENRY W. HODGES, Clerk of the Court of Appeals of the District of Columbia, do hereby certify that the foregoing printed and typewritten pages numbered from 1 to 69, inclusive, constitute a true copy of the transcript of record and proceedings of said Court of Appeals in the case of The United States Shipping Board Emergency Fleet Corporation, Appellant, vs. The Western Union Telegraph Company, No. 4322, April Term, 1926, as the same remain upon the files and records of said Court of Appeals.

In testimony whereof, I hereunto subscribe my name and affix the seal of said Court of Appeals, at the City of Washington, this 8th day of July, A. D. 1926.

[SEAL] HENRY W. HODGES,
Clerk of the Court of Appeals of the District of Columbia.

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Supreme Court of the United States

Order allowing certiorari

Filed November 23, 1926

The petition herein for a writ of certiorari to the Court of Appeals of the District of Columbia is granted. And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

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